POLITICAL DICTIONARY

VOL. 1

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Francis Lieber.

POLITICAL DICTIONARY;

FORMING

A WORK OF UNIVERSAL REFERENCE,

BOTH

CONSTITUTIONAL AND LEGAL;

AND EMBRACING THE TERMS

OF CIVIL ADMINISTRATION,

OF POLITICAL ECONOMY AND SOCIAL RELATIONS,

AND

OF ALL THE MORE IMPORTANT STATISTICAL DEPARTMENTS OF

FINANCE AND COMMERCE.

IN TWO VOLUMES.

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THE POLITICAL DICTIONARY was suggested by the consideration that the 'Penny Cyclopædia' contains a great number of articles on matters of Constitution, Political Economy, Trade and Commerce, Administration, and Law; and that if these articles were so altered as to make them applicable to the present time, wherever alteration was necessary, and new articles were added, wherever there appeared to be a deficiency, a work might be made which would be generally useful.

The citizens of a Free State are or ought to be concerned about everything Political that may affect their own happiness and the condition of future generations. In a system like our own, which is founded on ancient institutions and usages, and has now for near eight centuries been in a course of growth and change, the relations of the several parts to one another become so complicated that it is difficult for any one man, however enlarged may be the range of his understanding, and however exact his judgment, to form a correct estimate of the whole of this present society of which he is a part. Such a knowledge can only be got by a combination of a knowledge of the past with the knowledge of the present; in other words, by an historical exposition of all existing institutions that rest on an ancient foundation, and by a consideration of their actual condition.

The articles in this work combine both methods. The subjects are treated historically, whenever such a treatment is required; and they are also presented in their actual condition, so far as that has been modified by successive enactments, continued usage, or other circumstances.

The mass of matter that is available in Parliamentary Reports and other printed documents, for such purposes as have been here indicated,

is such as no other nation has ever possessed; as indeed no other has ever established an Empire that embraces so many remote countries, so many varied interests. These materials have been used for this work, so far as the limits of it rendered it possible to use them efficiently.

Some of the articles in this Dictionary have been reprinted from the 'Penny Cyclopædia' with little or no alteration, and some have been reprinted with such alterations as were required by the changes that have taken place within the last ten years. Many articles are entirely new, and treat of important subjects which have never, so far as we know, been presented to English readers in the form of a cheap dictionary, or indeed in any other form.

It is perhaps hardly necessary to observe that most of the articles which are of a legal and historical character apply only to England; and, in some cases, to England and Ireland. Several articles however have been inserted in order to explain such of the institutions of Scotland as are matters of general interest.

LONDON, *August* 1*st*, 1845.

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POLITICAL DICTIONARY.

ABANDONMENT is a term used in marine insurance. Before a person who has insured a ship or goods can demand from an insurer or underwriter the stipulated compensation for a total loss of such ship or goods, he must *abandon* or relinquish to the insurer all his interest in any part of the property which may be saved.

ABATTOIR, the name given by the French to the public slaughter-houses which were established in Paris by a decree of Napoleon in 1810, and finished in 1818. There are three on the north, and two on the south side of Paris, not far from the barriers, and about two miles from the centre of the city. The cattle markets for the supply of Paris are several miles distant, and the cattle are driven from them round the exterior boulevards to the abattoirs, and consequently do not enter the city. The consumption of Paris in 1840 was 92,402 oxen, 437,359 sheep, 90,190 pigs, and 20,684 calves: the number of butchers, all of whom are required to take out a licence, does not much exceed five hundred. At one of the abattoirs each butcher has his slaughter-house, a place for keeping the meat, an iron rack for tallow, pans for melting it, and a place with convenience for giving cattle hay and water, and where they may be kept before being slaughtered. A fixed sum is charged for this accommodation, and in 1843 the fee was 6 francs for each ox, 4 fr. for a cow, 2 fr. for a calf, and 10 c. for a sheep. The income of the establishment, arising from these fees, the sale of manure, &c., was above 48,000*l.* in 1842. It is stated in Dulaure's 'Paris,' that the fee paid for each head of cattle includes all the expenses of slaughtering; but a witness who was examined before a Parliamentary Committee on Smithfield Market, and who had visited Paris for the purpose of inspecting the abattoirs, says that the butchers employ their own men. Dulaure's account is probably correct. The butchers can have their cattle slaughtered at any hour of the night, but they must take away the meat at night. There is an inspector appointed at each abattoir, and means are taken to prevent unwholesome meat getting into consumption. There are slaughter-houses under public regulations in most of the continental cities; and those of New York and Philadelphia and some other of the cities of the American Union are, it is said, placed on a similar footing. The medical profession in France attach great importance to slaughter-houses being strictly regulated, and removed from the midst of the population.

The great cattle-market in Smithfield for the supply of London existed above five centuries ago, but the spot was at that time a piece of waste ground beyond the city, instead of being, as at present, surrounded by a dense population. In 1842 there were sold in Smithfield Market 175,347 cattle, and 1,468,960 sheep, and at least this number are annually slaughtered within the limits of the metropolis. There are slaughtermen who kill for other butchers frequently above a hundred head of cattle, and perhaps five or six hundred sheep every week; many butchers kill for themselves to a considerable extent; and there are few who have not accommodation for slaughtering and dressing a few sheep, either in the cellar underneath their shop, or in the rear of

their premises. The business of slaughtering cattle and sheep in London is conducted just in the way most convenient to the butcher, without reference to the convenience and comfort of the public. There are slaughter-houses for sheep within fifty yards of St. Paul's Churchyard, and within a hundred and fifty yards of Ludgate-street, one of the great thoroughfares of London. The fear of creating a nuisance, cognisable as such by the law, is in some measure a substitute for the vigilant inspectorship maintained in the public slaughter-houses on the continent; and those who slaughter cattle know that in proportion as their establishments are cleanly and well ventilated, it is easier to keep the meat in a proper state; but the ignorant, the careless, and those who cannot afford to improve the accommodation and convenience of their slaughter-houses, require to be placed under the restraint of positive regulations. A general police regulation on the subject is thought to be necessary by many persons. In the Report of the Parliamentary Committee on Smithfield Market, to which allusion has already been made, the question of establishing abattoirs in London is noticed. The butchers objected to them on account of the expenses to which they would be put by having to carry the meat to their shops; and they alleged also that the meat would not keep so well in consequence of being removed so soon after being killed. These objections apply in some degree to the present system, under which the great slaughtermen kill for the butchers of a certain district, though the district is certainly much smaller than would be attached to one of several abattoirs.

By 4 & 5 Henry VII. c. 3, butchers were prohibited from killing cattle within the walls of the city of London, on account of "the annoyance of corrupt airs engendered by occasion of blood and other foul things coming by means of slaughter of beasts and scalding of swine." In 1532-3 this act was partially repealed by 24 Hen. VIII. c. 16, the preamble of which recited that since the act 4 & 5 Hen. VII. the butchers of London had made drains to carry off the filth from their slaughter-houses, and had adopted regulations for avoiding nuisances under the advice of the corporation of the city; and they also alleged that the cost of carrying and re-carrying meat made it dear. It was then enacted that the act aforesaid should not extend to butchers within the city, who may kill within the walls.

ABBEY (from the French *Abbaye*), a religious community presided over by an abbot or abbess. When the superior was denominated a Prior, the establishment was called a priory; but there was latterly no real distinction between a priory and an abbey. The priories appear to have been all originally off-shoots from certain abbeys, to which they continued for some time to be regarded as subordinate. The wealthiest abbeys, in former times, were in Germany; and of all such foundations in the world the most splendid and powerful was that of Fulda, or Fulden, situated near the town of the same name in Franconia. This monastery, which belonged to the order of St. Benedict, was founded by St. Boniface, in the year 784. Every candidate for admission into the princely brotherhood was required to prove his nobility. The monks themselves elected their abbot from their own number; and that dignitary became, by right of his office, Arch-Chancellor to the Empress, and Prince-Bishop of the diocese of Fulda. He claimed precedence over all the other abbots of Germany. One of the first effects of the Reformation, both in England and in Germany, was the destruction of the religious houses; in England their extinction was complete. [MONASTERY.]

In the early times of the French monarchy the term abbey was applied to a duchy or earldom, as well as to a religious establishment; and the dukes and counts called themselves abbots, although they remained in all respects secular persons. They took this title in consequence of the possessions of certain abbeys having been conferred upon them by the crown.

ABBOT, the title of the superior of certain establishments of religious persons of the male sex, thence called abbeys.

The word *abbot*, or *abbat*, as it has been sometimes written, comes from *abbatis*, the genitive of *abbas*, which is the Greek and Latin form of the Syriac *abba*, of which the original is the Hebrew *ab*, father. It is, therefore, merely an epithet of respect and reverence, and appears to have been at first applied to any member of the clerical order, just as the French 'père,' and the English 'father,' which have the same signification, still are in the Roman Catholic church. In the earliest age of monastic institutions, however, the monks were not priests; they were merely holy persons who retired from the world to live in common, and the abbot was that one of their number whom they chose to preside over the association. The general regulations for monasteries, monks, and abbots (Hegumeni) of the Emperor Justinian, in the sixth century, are contained in the Fifth Novel. In regard to general ecclesiastical discipline, all these communities were at this time subject to the bishop of the diocese, and even to the pastor of the parochial district within the bounds of which they were established. At length it began to be usual for the abbot, or, as he was called in the Greek Church, the Archimandrite (that is, the chief monk), or the Hegumenos (that is, the leader), to be in orders; and since the sixth century monks generally have been priests. In point of dignity an abbot is considered to stand next to a bishop; but there have been many abbots in different countries who have claimed almost an equality in rank with the episcopal order. A minute and learned account of the different descriptions of abbots may be found in Du Cange's Glossary, and in Carpentier's Supplement to that work. In England, according to Coke, there used to be twenty-six abbots (Fuller says twenty-seven), and two priors, who were lords of parliament, and sat in the House of Peers. These, sometimes designated Sovereigns, or General abbots, wore the mitre (though not exactly the same in fashion with that of the bishops), carried the crozier (but in their right hands, while the bishops carried theirs in their left), and assumed the episcopal style of lord. Some croziered abbots, again, were not mitred, and others who were mitred were not croziered. Abbots who presided over establishments that had sent out several branches were styled cardinal-abbots. There were likewise in Germany prince-abbots, as well as prince-bishops. In early times we read of field-abbots (in Latin, *Abbates Milites*), and abbot-counts (*Abba-Comites*, or *Abbi-Comites*). These were secular persons, upon whom the prince had bestowed certain abbeys, for which they were obliged to render military service as for common fiefs. A remnant of this practice appears to have subsisted in our own country long after it had been discontinued on the Continent. Thus, in Scotland, James Stuart, the natural son of James V., more celebrated as the Regent Murray, was, at the time of the Reformation, prior of St. Andrew's, although a secular person. And the secularization of some of the German ecclesiastic dignities has since occasioned something like a renewal of the ancient usage. We have in our day seen a prince of the House of Brunswick (the late Duke of York) at the same time commander-in-chief of the British army and Bishop of Osnabrück. The efforts of the abbots to throw off the authority of their diocesans long disturbed the church, and called forth severe denunciations from several of the early councils. Some abbeys, however, obtained special charters, which recognized their independence; a boon which, although acquired at first with the consent of the bishop, was usually defended against his successors with the most jealous punctiliousness. Many of the abbots lived in the enjoyment of great power and state. In ancient times they possessed nearly absolute authority in their monasteries. "Before the time of Charlemagne," says Gibbon, "the abbots indulged themselves in mutilating their monks, or putting out their eyes; a punishment much less cruel than the tremendous *vade in pace* (the subterraneous dungeon or sepulchre), which was afterwards invented." The picture which this writer draws of what he calls "the abject slavery of the monastic discipline" is very striking. "The actions of a monk, his words, and even his thoughts, were

determined by an inflexible rule, or a capricious superior: the slightest offences were corrected by disgrace or confinement, extraordinary fasts, or bloody flagellation; and disobedience, murmur, or delay, were ranked in the catalogue of the most heinous sins." The external pomp and splendour with which an abbot was in many cases surrounded, corresponded to the extensive authority which he enjoyed within his abbey, and throughout his domains. St. Bernard is thought to refer to the celebrated Luger, abbot of St. Denis, in the beginning of the twelfth century, when he speaks, in one of his writings, of having seen an abbot at the head of more than 600 horsemen, who served him as a cortege. "By the pomp which these dignitaries exhibit," adds the saint, "you would take them, not for superiors of monasteries, but for the lords of castles,—not for the directors of consciences, but for the governors of provinces." This illustrates a remark which Gibbon makes in one of his notes:—"I have somewhere heard or read the frank confession of a Benedictine abbot:—'My vow of poverty has given me 100,000 crowns a year, my vow of obedience has raised me to the rank of a sovereign prince.'" Even in the unreformed parts of the Continent, however, and long before the French Revolution, the powers of the heads of monasteries, as well as those of other ecclesiastical persons, had been reduced to comparatively narrow limits; and the power both of abbots and bishops had been subjected in all material points to the civil authority. The former became merely guardians of the rule of their order, and superintendents of the internal discipline which it prescribed. In France this salutary change was greatly facilitated by the concordat made by Francis I. with Pope Leo X. in 1516, which gave to the king the right of nominating the abbots of nearly every monastery in his dominions. The only exceptions were some of the principal and most ancient houses, which retained the privilege of electing their superiors. The title of abbot has also been borne by the civil authorities in some places, especially among the Genoese, one of whose chief magistrates used to be called the Abbot of the People. Nor must we forget another application of the term which was once famous in our own and other countries. In many of the French towns there used, of old, to be annually elected from among the burgesses, by the magistrates, an Abbé de Liesse (in Latin, Abbas Lætitiæ), that is, an Abbot of Joy, who acted for the year as a sort of master of the revels, presiding over and directing all their public shows. Among the retainers of some great families in England was an officer of a similar description, styled the Abbot of Misrule; and in Scotland the Abbot of Unreason was, before the Reformation, a personage who acted a principal part in the diversions of the populace, and one of those whom the zeal of the reforming divines was most eager in proscribing.

ABDICATION (from the Latin *abdicatio*), in general is the act of renouncing and giving up an office by the voluntary act of the party who holds it. The term is now generally applied to the giving up of the kingly office; and in some countries a king can abdicate, in the proper sense of that term, whenever he pleases. But the King of England cannot abdicate, except with the consent of the two Houses of Parliament, in any constitutional form; for a proper abdication would be a divesting himself of his regal powers by his own will, and such an abdication is inconsistent with the nature of his kingly office. It is, however, established by a precedent that he does abdicate, or an abdication may be presumed, if he does acts which are inconsistent with and subversive of that system of government of which he forms a part. In Blackstone's 'Commentaries,' vol. i. pp. 210-212, and iv. p. 78, mention is made of the resolution of both Houses, in 1688, that "King James II. having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people; and by the advice of Jesuits and other wicked persons, having violated the fundamental laws, and having withdrawn himself out of the kingdom; has abdicated the government, and that the throne is thereby vacant." Thus it appears that the Houses

of Lords and Commons assumed the doctrine of an original contract between the king and the people as the foundation of their declaration that James II. had abdicated the throne; and Blackstone, in arguing upon this declaration, assumes, what is contrary to the evidence of history, that the powers of the King of England were originally delegated to him by the nation.

It appears, by the parliamentary debates at that period, that in the conference between the two Houses of Parliament, previous to the passing of the statute which settled the crown upon William III., it was disputed whether the word 'abdicated,' or 'deserted,' should be the term used, to denote in the Journals the conduct of James II. in quitting the country. It was then resolved that the word 'abdicate' should be used, as including in it the mal-administration of his government. But in coming to this resolution the Houses gave a new meaning to the word.

Among the Romans the term Abdicatio signified generally a rejection or giving up of a thing, and a magistrate was said to abdicate who for any reason gave up his office before the term was expired.

The term Resignation, according to English usage, has a different meaning from abdication; though it is stated that these words are sometimes confounded. [RESIGNATION.]

ABDUCTION (from the Latin word *abductio*, which is from the verb *abducere*, to lead or carry off) is an unlawful taking away of the person of another, whether of child, wife, ward, heiress, or women generally.

ABDUCTION *of child.* [KIDNAPPING.]

ABDUCTION *of wife* may be either by open violence, or by fraud and persuasion, though the law in both cases supposes force and constraint. The remedy given to the husband in such a case is an action, by which he may recover, not the possession of his wife, but damages for taking her away; and also, by statute of 3 Edward I. c. 13, the offender shall be imprisoned for two years, and fined at the pleasure of the king. The husband is also entitled to recover damages against such as persuade and entice the wife to live separate from him without sufficient cause.

ABDUCTION *of ward.* A guardian is entitled to an action if his ward be taken from him, but for the damages recovered in such action he must account to his ward when the ward comes of age. This action is now nearly superseded by a more speedy and summary method of redressing all complaints relative to guardians and wards,—namely, by application to the Court of Chancery.

ABDUCTION *of heiress.* By 9 George IV. c. 31, § 19, when any woman shall have any interest, legal or equitable, present or future, in any estate real or personal, or shall be heiress presumptive, or next of kin to any one having such interest, any person who from motives of lucre shall take or detain her against her will for the purpose of her being married or defiled, and all counsellors, aiders, and abettors of such offences are declared guilty of felony, and punishable by transportation for life, or not less than seven years, or imprisonment with or without hard labour. The taking of any unmarried girl under sixteen out of the possession of a parent or guardian is declared a misdemeanor, and is punishable by fine and imprisonment (§ 20). The marriage, when obtained by means of force, may be set aside on that ground. In this case, as in many others, *fraud* is legally considered as equivalent to force; and, consequently, in a case where both the abduction and marriage were voluntary in fact, they were held in law to be forcible, the consent to both having been obtained by fraud. (See the case of the *King* v. *Edward Gibbon Wakefield.*)

ABDUCTION *of women generally.* The forcible abduction and marriage of women is a felony. Here, and in the case of stealing an heiress, the usual rule that a wife shall not give evidence for or against her husband is departed from, for in such case the woman can with no propriety be reckoned a wife where a main ingredient, her consent, was wanting to the contract of marriage; besides which there is another rule of law, that "a man shall not take advantage of his own wrong," which would obviously be done here, if he who carries off a woman could, by

forcibly marrying her, prevent her from being evidence against him, when she was perhaps the only witness to the fact.

By 5 & 6 Vict. c. 38, § 11, charges of abduction of women and girls cannot be tried by justices at sessions, but must take place in a superior court.

ABEYANCE is a legal term, derived from the French *bayer*, which, says Richelet, means to "look at anything with mouth wide open." Coke (Co. Litt. 342, b.) explains the term thus, "*En abeiance*, that is, in expectation, of the French *bayer* to expect. For when a parson dieth, we say that the freehold is in abeyance, because a successor is in expectation to take it; and here note the necessity of the true interpretation of words. If tenant *pur terme d'autre vie* dieth, the freehold is said to be in abeyance until the occupant entereth. If a man makes a lease for life, the remainder to the right heirs of J. S., the fee-simple is in abeyance until J. S. dieth. And so in the case of the parson, the fee and right is in abeyance, that is in expectation, in remembrance, entendment or consideration of law, in consideratione sive intelligentia legis; because it is not in any man living; and the right that is in abeyance is said to be *in nubibus*, in the clouds, and therein hath a qualitie of fame whereof the poet speaketh:

'Ingrediturque solo et caput inter nubila condit.'"

Such is a specimen of the ridiculous absurdity with which Coke seeks to relieve the dryness of legal learning.

The expression that the freehold or the inheritance of an estate is in abeyance means that there is no person in whom the freehold or the inheritance is then vested, and that the ownership of the freehold or of the inheritance is waiting or expecting for an owner who is to be ascertained. This doctrine of the suspense of the freehold or of the inheritance is repugnant to the general principles of the tenure of land in England. By the old law, it was always necessary that some person should be in existence as the representative of the fee or freehold for the discharge of the feudal duties, and to answer the actions which might be brought for the fief; and thus the maxim arose that the freehold of lands could never be in abeyance. Still it was admitted that both the inheritance and the freehold might in some cases be in abeyance. Thus, in the case of glebe lands belonging to parsons, and of lands held by bishops and other corporations sole, it is said that the *inheritance* must always be in abeyance, as no one can, under any circumstances, be entitled to more than an estate for life in these lands; and during a vacancy of the church, it is said that the freehold is in abeyance, for there is then no parson to have it, and it is said that the freehold cannot be in the patron, who, though he possesses a right to present to the benefice, has no direct interest in the land annexed to it. This subject is further considered under TENURE.

But whatever may be the true doctrine of abeyance in the case just mentioned, it is certain that such an abeyance cannot be *created* by the voluntary acts of parties. Therefore if a man grant land in such a manner that the immediate *freehold* would, if the deed were allowed to operate, be in abeyance, it is a rule of law that the deed by which such a grant is made, is void; and if the grant be so framed that the *inheritance* would be in abeyance, it is a rule of law that the inheritance shall remain in the person who makes the grant. The object of this rule of law is to prevent the possibility of the freehold subsisting for a time without an owner. Also, "When a remainder of inheritance is limited in contingency by way of use or devise, the inheritance in the mean time, if not otherwise disposed of, remains in the grantor and his heirs, or, in the heirs of the testator, until the contingency happens to take it out of them." (Fearne, *Contingent Remainders*, p. 513, 4th edit.)

Titles of Honour are also sometimes said to be in abeyance, which occurs when the persons next in inheritance to the last possessor are several females or co-parceners. In this case the title is not extinct, but is in abeyance; and may be revived at any time by the king. Several instances of the exercise of this prerogative are on record both in ancient and modern times. (Coke upon Littleton, 165, *a*.)

Among the Romans an hereditas, of which the heres was not yet ascertained, was said 'jacere;' and this is a case which corresponds to the abeyance of the English law. When the heres was ascertained, his rights as heres were considered to commence from the time of the death of the testator or the intestate. During the interval between the death and the ascertainment of the heres, the hereditas was sometimes spoken of as a person; and sometimes it was viewed as representing the defunct. These two modes of viewing the hereditas in this intermediate time express the same thing, the legal capacity of the defunct. The reason for this fiction was peculiar to the Roman law, and it had no other object than to facilitate certain acquisitions of property by means of slaves who were a part of the hereditas. A slave could in many cases acquire for his master; but in the case of an hereditas jacens, the slave could only acquire for the benefit of the hereditas by virtue of a fiction that he had still an owner of proper legal capacity. The fiction accordingly made the acquisition of the slave valid by reference to the legal capacity of his defunct owner, which was known, and not to the condition of the unascertained heres, who might not have the necessary legal capacity. Thus, if a Roman, who had a legal capacity to make a will, died intestate, and one of the intestate's slaves was appointed his heres by another person, the slave could take as heres for the benefit of the hereditas to which he belonged, by virtue of the fiction which gave to this hereditas the legal capacity of the defunct intestate. (Savigny, *System des heutigen Römischen Rechts*, ii. 363.)

ABILITY; CAPACITY, LEGAL. [AGE; WIFE.]

ABJURATION (*of the Realm*) signifies a sworn banishment, or the taking of an oath to renounce and depart from the realm for ever. By the ancient common law of England, if a person guilty of any felony, excepting sacrilege, fled to a parish church or churchyard for sanctuary, he might, within forty days afterwards, go clothed in sackcloth before the coroner, confess the full particulars of his guilt, and take an oath to abjure the kingdom for ever, and not to return without the king's licence. Upon making his confession and taking this oath, he became attainted of the felony; he had forty days from the day of his appearance before the coroner to prepare for his departure, and the coroner assigned him such port as he chose for his embarkation, to which he was bound to repair immediately with a cross in his hand, and to embark with all convenient speed. If he did not go immediately out of the kingdom, or if he afterwards returned into England without licence, he was condemned to be hanged, unless he happened to be a clerk, in which case he was allowed the benefit of clergy. This practice, which has obvious marks of a religious origin, was, by several regulations in the reign of Henry VIII., in a great measure discontinued, and at length by the statute 21 James I. c. 28, all privilege of sanctuary and abjuration consequent upon it were entirely abolished. In the reign of Queen Elizabeth, however, amongst other severities then enacted against Roman Catholics and Protestant Dissenters convicted of having refused to attend the divine service of the Church of England, they were by statute (35 Eliz. c. 1) required to *abjure the realm* in open court, and if they refused to swear, or returned to England without licence after their departure, they were to be adjudged felons, and to suffer death without benefit of clergy. Thus the punishment of abjuration inflicted by this Act of Parliament was far more severe than abjuration for felony at the common law: in the latter case, the felon had the benefit of clergy; in the former, it was expressly taken away. Protestant Dissenters are expressly exempted from this severe enactment by the Toleration Act; but Popish recusants convict were liable to be called upon to abjure the realm for their recusancy, until a statute, passed in the 31 Geo. III. (1791), relieved them from that and many other penal restrictions upon their taking the oaths of allegiance and abjuration.

ABJURATION (*Oath of*). This is an oath asserting the title of the present royal family to the crown of England. It is imposed by 13 Will. III. c. 6; 1 Geo. I. c. 13; and 6 Geo. III. c. 53. By this

oath the juror recognises the right of the king under the Act of Settlement, engages to support him to the utmost of the juror's power, promises to disclose all traitorous conspiracies against him, and expressly disclaims any right to the crown of England by the descendants of the Pretender. The juror next declares that he rejects the opinion that princes excommunicated by the Pope may be deposed or murdered; that he does not believe that the Pope of Rome or any other foreign prince, prelate, or person has or ought to have jurisdiction directly or indirectly within the realm. The form of oath taken by Roman Catholics who sit in either House of Parliament is given in 10 Geo. IV. c. 7 (the Roman Catholic Relief Act). The first part of the oath is similar in substance to the form required under 6 Geo. III. c. 53. The following part of the oath is new:—"I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm; and I do solemnly swear that I will never exercise any privilege to which I am or may become entitled to disturb or weaken the Protestant religion or Protestant government in the United Kingdom; and I do solemnly, in the presence of God, profess, testify and declare that I do make this declaration, and every part thereof, in the plain and ordinary sense of the words of this oath, without any evasion, equivocation, or mental reservation whatsoever." Before the passing of this Act (10 Geo. IV. c. 7), the oath and declaration required to be taken and made as qualification for sitting and voting in Parliament were the oaths of allegiance, supremacy, and abjuration, and the declarations commonly called the declarations against transubstantiation, the invocation of saints, and the sacrifice of the mass.

The case of a member of the House of Commons becoming converted to the Roman Catholic faith after he had taken his seat, occurred for the first time since the passing of 10 Geo. IV. c. 7, in the session of 1844, and is thus noticed in the Votes and Proceedings of the House, dated May 13:—"Charles Robert Scott Murray, esquire, member for the county of Buckingham, having embraced the Roman Catholic religion, took and subscribed the oath required to be taken and subscribed by Roman Catholics."

The word Abjuratio does not occur in classical Latin writers, and the verb Abjurare, which often occurs, signifies to deny a thing falsely upon oath.

ABORI'GINES, a term by which we denote the primitive inhabitants of a country. Thus, to take one of the most striking instances, when the continent and islands of America were discovered, they were found to be inhabited by various races of people, of whose immigration into those regions we have no historical accounts. All the tribes, then, of North America may, for the present, be considered as aborigines. We can, indeed, since the discovery of America, trace the movements of various tribes from one part of the continent to another; and, in this point of view, when we compare the tribes *one with another*, we cannot call a tribe which has changed its place of abode, aboriginal, with reference to the new country which it has occupied. The North American tribes that have moved from the east side of the Mississippi to the west of that river are not *aborigines* in their new territories. But the *whole mass* of American Indians must, for the present, be considered as *aboriginal* with respect to the rest of the world. The English, French, Germans, and others, who have settled in America, are, of course, not *aborigines* with reference to that continent, but settlers, or colonists.

If there is no reason to suppose that we can discover traces of any people who inhabited England prior to and different from those whom Julius Cæsar found here, then the Britons of Cæsar's time are the aborigines of this island.

The term aborigines first occurs in the Greek and Roman writers who treated of the earlier periods of Roman history, and, though interpreted by Dionysius of Halicarnassus (who writes it, in common with other Greek authors, Ἀβωριγῖνες, or Ἀβοριγῖνες, or Ἀβωριγῖνοι) to mean *ancestors*, it is more probable that it corresponds to the Greek word *autochthones*. This latter designation, indeed, expresses the most remote possible origin of a nation, for it

signifies "people coeval with the land which they inhabit." The word *aborigines*, though perhaps not derived, as some suppose, from the Latin words *ab* and *origo*, still has the appearance of being a *general* term analogous to *autochthones*, and not the name of any people really known to history. The *Aborigines* of the ancient legends, interwoven with the history of Rome, were, according to Cato, the inhabitants of part of the country south of the Tiber, called by the Romans Latium, and now the Maremma of the Campagna di Roma. (Niebuhr, *Roman History*.)

The word aborigines has of late come into general use to express the natives of various parts of the world in which Europeans have settled; but it seems to be limited or to be nearly limited to such natives as are barbarous, and do not cultivate the ground, and have no settled habitations. Some of the later Roman writers, as Sallust, describe the Italian aborigines as a race of savages, not living in a regular society: a description which, as Niebuhr remarks, is probably nothing else than an ancient speculation about the progress of mankind from animal rudeness to civilization. Such a speculation was very much to Sallust's taste, and we find it also in Lucretius and Horace. Probably the modern sense of this word and the sense in which Sallust uses it agree more nearly than appears at first. The aborigines of Australasia and Van Diemen's Land (if there are any left in Van Diemen's Land) are so called as being savages, though the name may be applied with equal propriety to cultivators of the ground. Some benevolent people suppose that aborigines, who are not cultivators of the ground, may become civilized like Europeans. But it has not yet been proved satisfactorily that this change can be effected in any large numbers; and if it can be effected, it is an essential condition that the aborigines must give up their present mode of life and adopt that of the settlers. But such a change is not easy: even in the United States of North America it has been only partially effected. The wide expanse of country between the Mississippi and the Atlantic is now nearly cleared of the aborigines, and the white man, who covets the possession of land, will follow up his victory till he has occupied every portion of the continent which he finds suitable for cultivation. The red man must become a cultivator, or he must retire to places where the white man does not think it worth his while to follow him. The savage aborigines do not pass from what we call barbarism to what we call civilization without being subjected to the force of external circumstances, that is, the presence among them of settlers or conquerors. There is no more reason for supposing that huntsmen will change their mode of life, such as it is, without being compelled, than that agricultural people will change theirs. Aborigines, then, as we now understand them, will remain what they are until they are affected by foreign intercourse; and this intercourse will either destroy them in the end, a result which is confirmed by most of our experience, or it will change their habits to those of their conquerors or the settlers among them, and so preserve them, not as a distinct nation, for that is impossible, but by incorporating them among the foreigners. A nation of agriculturists, though conquered, may and does endure, and may preserve its distinctive character; a nation of savages can only endure as such by keeping free from all intercourse with an agricultural and commercial people.

ABORTION. [Homicide.]

ABROGATION. [Law.]

ABSENTEE. This is a term applied, generally by way of reproach, to that class of capitalists who derive their income from one country, and reside in another country, in which they expend their income. We here propose to state some of the more material points in the controverted question, whether the consumption of absentees is an evil to the particular country from which they derive their revenues. There is a decided tendency in the progress of social intercourse to loosen the ties which formerly bound an individual or a family to one particular spot. From the improvement of roads, and the rapidity and certainty of steam navigation, Dublin is now as near, in point of time, to London, as Bath was half a century ago; and the distance

between England and every part of the Continent is in the same way daily diminishing. The inducements to absenteeism, whether from Ireland to England, or from England to the Continent, are constantly increasing; and it is worth while considering whether the evils of absenteeism are so great as some suppose, or whether, according to a theory that was much in vogue some years ago, absenteeism is an evil at all.

The expenditure of a landed proprietor resident upon his estate calls into action the industry of a number of labourers, domestics, artisans, and tradesmen. If the landlord remove to another part of the same country, the labourers remain; the domestic servants probably remove with him; but the artisans and tradesmen whom he formerly employed lose that profit which they once derived by the exchange of their skill or commodities for a portion of the landlord's capital. It never occurs to those who observe and perhaps deplore these changes, that the landlord ought to be prevented from spending his money in what part of his own country he pleases. They conclude that there is only a fresh distribution of the landlord's revenues, and that new tradesmen and mechanics have obtained the custom which the old ones have lost. But if the same landlord go to reside in a foreign country—if the Englishman go to France or Italy, or the Irishman to England—it is sometimes asserted that the amount of revenue which he spends in the foreign country is so much clear loss to the country from which he derives his property, and so much encouragement withdrawn from its industry; and that he ought, therefore, to be compelled to stay at home, instead of draining his native land for the support of foreign rivals. Some economists maintain that this is a popular delusion, and that, in point of fact, the revenue spent by the landlord in a foreign country has precisely the same effect upon the industry of his own country as if his consumption took place at home, for that, in either case, it is unproductive consumption. We will endeavour to state their arguments as briefly as we can.

We will suppose a landowner to derive an income of 1000*l.* a year from an estate in one of our agricultural counties. We leave out of the consideration whether he resides or not upon his estate, and endeavours, by his moral influence, to improve the condition of his poorer neighbours, or lets his land to a tenant. The landowner may reside in London, or Brighton, or Cheltenham. With his rents he probably purchases many articles of foreign production, which have been exchanged for the productions of our own country. There are few people now who do not understand that if we did not take from foreigners the goods which they can produce cheaper and better than we can, we should not send to foreigners the goods which we can produce cheaper and better than they can. If we did not take wines from the continental nations, for instance, we should not send to the continental nations our cottons and hardware; and the same principle applies to all the countries of the earth with which we have commercial intercourse. The landlord, therefore, by consuming the foreign wines encourages our own manufactures of cotton and hardware, as much as if, drinking no foreign wine at all, he applied the money so saved to the direct purchases of cotton and hardware at home. But he even bestows a greater encouragement upon native industry, by consuming wine which has been exchanged for cotton and hardware, than if he abstained from drinking the wine; for he uses as much cotton and hardware as he wants, as well as the wine; and by using the wine he enables other people in Europe to use the cotton and hardware, who would otherwise have gone without it. For all that he consumes of foreign produce, some English produce has been sent in exchange. Whatever may be the difference between the government accounts of exports and imports (than which nothing can be more fallacious), there is a real balance between the goods we send away and the goods we receive; and thus the intrinsic value of all foreign trade is this,—that it opens a larger store of commodities to the consumers, whilst it develops a wider field of industry for the producers. There

used to be a notion, which for many years affected our legislation, that unless we sent away to foreigners a great many more goods than we received from them, or, in other words, unless our exports were much greater in value than our imports, the balance of trade was against us. [BALANCE OF TRADE.] This notion was founded upon the belief that if we sent away a greater amount of goods than those we received in exchange, we should be paid the difference in bullion; and that the nation would be rich, not in the proportion in which it was industrious at home, and in which its industry obtained foreign products in exchange for native products, but as it got a surplus of gold, year by year, through its foreign trade. Now, in point of fact, no such surplus ever did accrue, or ever could have accrued; for the commercial transactions between one country and another are in fact a series of exchanges or barter, and gold is only the standard by which those exchanges are regulated. We shall see how these considerations bear upon the relations of the English landlord to his native country when he becomes an absentee.

When the landlord, whose case we have supposed, resided upon his estate, he probably received his rental direct from his tenants. That rental was the landlord's share of as many quarters of corn, as many head of oxen and sheep, as many fleeces of wool, as many fowls, as many pounds of butter, and so forth, as the estate produced. Three or four centuries ago the landlord's share was paid in kind: for the convenience of all parties it is now paid in money, or, in other words, the tenant sells the landlord's share, as well as his own share, and pays over the amount of his share to the landlord, in a money-rent, instead of in produce. When the landlord removes to a distant part of the country, this arrangement of modern times becomes doubly convenient. The rental is collected by a steward, and is remitted, usually through a banker, to the landlord. By this process, the produce of the land may be most advantageously sold; and the landlord receives the amount of his share at his own door, without even the risk of sending money from one part of the kingdom to another.

If the landlord becomes an absentee, the process of remitting his rental assumes a more complicated shape. We will suppose that he settles in the Netherlands. His means of living there depend upon the punctual transmission of the value of his share of the corn, cattle, and other produce which grow upon his estate in England. To make the remittance in bullion would not only be expensive, but unsafe; and, indeed, remittances in bullion can never be made to any considerable extent (such as the demands of absentees would require) from one country to another; for these large remittances would produce a scarcity of money at home, and then the bullion being raised in value, its remittance would consequently cease. Although the expenses of our armies in the Peninsula, in 1812-13, amounted to nearly 32,000,000*l.*, the remittances in coin were little more than 3,000,000*l.* Nearly all foreign remittances are carried on by bills of exchange. The operation of a bill of exchange, in connection with the absentee landlord, would be this:—He is a consumer now, in great part, of foreign produce; he may require many articles of English produce, through the effect of habit; but whether or no, there must be an export of English goods to some country, to the amount of the foreign goods which he consumes, otherwise his remittances could not be made to him. He draws a bill upon England, which he pays, through a banker, to a merchant at Antwerp. This bill represents his share of the corn and cattle upon his farm; but the merchant at Antwerp, who does not want corn and cattle, transmits it to a merchant at London, in payment for cotton goods and hardware, which he does want. Or there may be another process. The agent, in England, of the absentee landlord, may procure a bill upon the merchant at Antwerp, which he transmits to the English landlord; and the merchant at Antwerp, recognising in that bill the representation of a debt which he has incurred to England, hands over the proceeds to the bearer of the bill. In either case the bill represents the value

of English commodities exported to foreigners. It is alleged that the consumption of an English resident in a foreign state, out of a capital derived from England, produces, in principle, the same indirect effects upon English industry, as his partial or entire consumption of foreign goods in England. His consumption of foreign goods abroad is equivalent to an importation of foreign goods into England; and that consumption, it is said, produces a correspondent exportation of English goods to the foreigner. If England sends out a thousand pounds' worth of her exports in consequence of the absentee's residence abroad, it is maintained that it cannot be said that she gets nothing in return. She would have had to pay a thousand pounds to the landlord wherever he resided; and the only question is, whether she pays the amount less advantageously for the national welfare to the absentee, than to the resident at home. The political economists, whose opinions we have endeavoured to exhibit, maintain that she does not. It is probable that a good deal of the difficulty which this question presents has arisen from the circumstance that the subtraction of a particular amount of expenditure from a particular district is felt in the immediate locality as an evil, while the benefit which still remains to the whole country is not perceived, because it is universally diffused.

But it would be a widely different question if the absentee landlord, who had been accustomed to expend a certain portion of his income in the improvement of his estate in England, were to suspend those improvements, and invest his surplus capital in undertakings in a foreign country. This the political economists, who have been most consistent in their opinions as to the effects of absentee consumption, never maintained: if they had, they would have confounded the great distinction between accumulation and consumption, upon which the very foundations of their science rest. In many cases the smaller consumption of an absentee, in a country where the necessaries of life are cheap, enables him to accumulate with greater ease than he could at home; and this accumulation is, in nearly every case, invested at home. It is the same thing whether the absentee improves his own estate by the accumulation, or lends the amount of the capital so saved to other encouragers of industry at home. Nor could the political economists ever have intended, in maintaining, as a mere question of wealth, that it was a matter of indifference where an income was spent, to put out of view the moral advantages which arise out of a rational course of individual expenditure.

(M'Culloch's Evidence before the Select Committee on the State of Ireland, 1825, Fourth Report, pp. 813-815; also his Evidence before the Select Committee on the State of the Poor in Ireland, 1830, p. 592, &c.—Leslie Foster's *Essay upon Commercial Exchange*, 1804, quoted in the last-mentioned Report, p. 597; Say, *Cours Complet d'Economie Politique*, tom. v. chap. 6; Chalmers on *Political Economy*, p. 200, 1832; *Quarterly Review*, vol. xxxiii. p. 459, for a hostile examination of Mr. M'Culloch's opinions.)

So far we have given the arguments of those economists who have contended that absenteeism is no injury to the country from which the rent of the absentee is derived. It must be admitted that the evil is not so serious as many people suppose, and if we take everything into the account, it may be that the evil is inconsiderable. So complicated are the relations of modern society, that any restraint upon the mode in which a man spends his income would probably do much more mischief, even to the country from which an absentee derives his income, than the absenteeism itself does, whatever that amount of mischief may be.

Still, as a mere scientific question, the opinion of those who maintain that absenteeism is no loss to the country of the absentee, requires some limitation. It is easy to show that its direct effect is to diminish accumulation in the country of the absentee, and it is not easy to show that this direct effect is counteracted to its full amount in any indirect way.

It cannot be proved, as it has been stated above, that the absentee's consumption of foreign goods abroad is equivalent to an importation of foreign goods into

England, and that such consumption produces a correspondent exportation of English goods to the foreigner. The absentee is enabled to receive his rent abroad because a foreign trade already exists; and it is not necessary, in order that he shall be able to receive his rent in money abroad, that a trade should exist between his native country and the country of his residence. There must be a foreign trade somewhere, in order that he may receive his rent abroad in money, but a man may live in a part of Europe which has no trade with Great Britain, and he will receive his money by an indirect route, and by means of the trade of England with some other foreign country. But it does not follow that the foreign trade of Great Britain is increased by the consumption of an absentee abroad so as to produce an exportation of English goods to the amount of his foreign consumption. And if we admit that the absentee's consumption of foreign goods abroad produces all the effect that has been attributed to it, this will not remove the whole difficulty. Many of the things which he consumes abroad are not the peculiar products of the foreign country which he would or might consume, whether he was in England or a foreign country. He consumes and uses many things abroad which he would consume or use in England, and which must be furnished by the country in which he is residing.

Accumulation, or the increase of wealth in a country, can only arise from savings or from profits. All persons who supply the demands of others obtain a profit by the transaction; at least the obtaining of a profit is the object with which a demand is supplied, and the actual obtaining of a profit is the condition without which a demand cannot be permanently supplied. All persons who have an income to spend may in one sense consume it unproductively, as it is termed, that is, the income may be spent merely for the purpose of enjoyment, and not for the purpose of profitable production. But no income which is received in money can be spent without indirectly causing profitable production, for every person who supplies the wants of the spender of the income receives a portion of the spender's money, part of which portion is the profit of the supplier. If this income is spent in France or in Belgium, persons in France or in Belgium derive a profit from supplying the absentee, and this profit enables them to accumulate. What is thus spent in France or in Belgium produces a profit to a Frenchman or a Belgian, and enables him to accumulate, and this profit is something taken from the profits of those who would supply the demands of the consumer in England. If all the persons who come to settle in London, and require commodious houses, servants, fruits, vegetables, and so forth, were to settle at Brussels, the houses which are now built in London, and the grounds which are employed as kitchen-gardens round the metropolis, would not exist, and the profit derived from this employment of capital would not exist. It would be transferred to Brussels and to Belgian capitalists. This would be the immediate effect of the wealthy residents in London removing to Brussels. The removal of these residents to Brussels would be the withdrawal of one of the means of profitably employing capital, and would so far be a loss to the national wealth. Nor can it be shown that the capital which is now employed in and about London in building houses and cultivating garden-ground could be employed with equal profit in some other way; for to assert this would be equivalent to asserting that it is always possible to employ capital under all circumstances in a manner equally profitable. It may be rejoined, that if the wealthy residents of London removed to Brussels, English capital would be required in order to accommodate them with houses, and to provide other ordinary necessaries. This may be admitted, and yet it does not remove all the difficulty, for if the residents were to remove to various towns of Italy, the employment of English capital would not be required to the same degree as if they were all to remove to Brussels.

There are also numerous small sources of profit arising from the supply of the ordinary wants of a man and his family, which accrue to the people of the place

in which a man fixes his residence: these are the ordinary retail profits of trade. This is obvious in the case of a number of families quitting a provincial town to reside in London: the provincial town decays, and that source of profit which is derived from supplying the wants of the families is transferred to the tradesmen of their new place of residence. This, which is true as to one place in England compared with another, is equally true as to England compared with Belgium or France. If we take into account merely the amount of wages which a large body of absentees must pay to their domestic servants, this will form a very considerable sum. The savings of domestic servants in England from their wages are invested in various ways; and such savings are no small part of the whole amount of the deposits in Savings' Banks. It will hardly be maintained that all those who would be employed as domestic servants in London, if the absentees in France were to come to live in London, are employed with equal profit to themselves while the absentees are abroad. London is supplied with domestic servants from the country, many of whom would be living at home and doing nothing, if there were no demand for their services in London; and everything that diminishes such demand, diminishes the savings of a class whose accumulated earnings form a part of the productive capital of Great Britain.

Those, then, who maintain that absenteeism has no effect on the wealth of the country from which the absentee derives his income, maintain a proposition which is untrue. Those who maintain that the amount which a man spends in a foreign country is so much clear loss to the country of the absentee, are also mistaken. There are many ways in which the loss is indirectly made up; but whatever may be its amount, it would be unwise to check absenteeism by any direct means, and it is not easy to see how it can be checked indirectly in any way that will produce good.

Since writing this we have seen 'Five Lectures on Political Economy,' delivered before the University of Dublin, in Michaelmas Term, 1843, by J. A. Lawson, LL.B., in which the subject of absenteeism is discussed, though from a somewhat different point of view. Mr. Lawson does not agree with those economists who think that a country can sustain no injury from the residence abroad of landlords and other proprietors of revenue. He is of opinion that, so far at least as Ireland is concerned, absenteeism is an economical evil. His views on the effects of absenteeism are contained in Lecture V., pp. 122-131.

ACADEMY. [UNIVERSITY.]

ACADEMIES. [SOCIETIES.]

ACCEPTANCE. [BILL OF EXCHANGE.]

ACCEPTOR. [BILL OF EXCHANGE.]

ACCOUNTANT-GENERAL, an officer of the Court of Chancery, first appointed under an act (12 Geo. I. c. 32) "for securing the moneys and effects of the suitors." The act recites that ill consequence and great prejudice already had and might again ensue to the suitors by having their moneys left in the sole power of the Masters of the Court. The bonds, tallies, orders and effects of suitors were, it appears, until the passing of this act, locked up in several chests in the Bank of England, under the direction of the Masters and two of the Six Clerks. The act confirms a previous order of the Court of Chancery for adopting a different system; and § 3 enacts that "to the end the account between the suitors of the High Court of Chancery and the Bank of England may be the more regularly and plainly kept, and the state of such account may be at all times seen and known," there shall be "one person appointed by the High Court of Chancery to act, perform and do all such matters and things relating to the delivering of the suitors' money and effects into the Bank, and taking them out of the Bank, &c., which was formerly done by the Masters and Usher of the Court." The Accountant-General is "not to meddle with the suitors' money, but only to keep an account with the Bank." No one has yet been appointed to the office without first becoming a Master in Chancery. The present Accountant-General, who was appointed in April, 1839, is the thirteenth who has filled the situation since

the first appointment in 1726. The salary is 900*l.* a year, and 600*l.* a year as Master's salary, with some other emoluments.

The total sum standing in the name of the Accountant-General on the 30th of April, 1841, was 40,957,839*l.*, of which above 39,000,000*l.* was invested in stock, and 1,759,629*l.* was in cash. (*App. to Report on Courts of Law and Equity*, No. 476, Sess. 1842.) The act 5 Vict. c. 5, § 63, directs the Accountant-General to cause to be laid before Parliament every year an account showing the state of the Suitors' Fund and the Suitors' Fee Fund, which stand in his name. The Suitors' Fund consists of money and stock unclaimed, but which are open to claim at any time. On the 1st of October, 1842, this fund amounted to 26,299*l.* cash, and 2,869,213*l.* stock. The Fee Fund accrues from fees formerly payable to the different officers of the court for their own advantage. These fees amounted to 62,808*l.* in the year ending Nov. 1842. The salaries of the lord chancellor, the vice-chancellors, and other officers of the Court of Chancery are paid out of these two funds.

Before the passing of the act 5 Vict. c. 5, for suppressing the equity jurisdiction of the Court of Exchequer, there was an Accountant-General of that court; and in April, 1841, a sum of 2,730,862*l.* was standing in his name in the Bank of England. The account is now transferred to the Accountant-General of the Court of Chancery. The duties of the Accountant-General and Masters of the Exchequer are now performed by the Queen's Remembrancer.

There is an Accountant-General of the Irish Court of Chancery.

ACCUMULATION. [CAPITAL.]

ACCUMULATION. An act of Parliament (39 & 40 Geo. III. c. 98), after declaring in the preamble that "it is expedient that all dispositions of real or personal estates, whereby the profits and produce thereof are directed to be accumulated or the enjoyment thereof postponed, should be made subject to the restrictions thereinafter contained," proceeds to enact to the following effect. No person can settle or dispose of property by deed, will, or otherwise, so as to accumulate the income thereof, either wholly or partially, "for any longer term than the life or lives of any such grantor or grantors, settlor or settlors, or the term of twenty-one years from the death of any such grantor, settlor, devisor, or testator, or during the minority or respective minorities of any person or persons who shall be living or in *ventre sa mere* at the time of the death of such grantor, devisor, or testator, or during the minority or respective minorities only of any person or persons who, under the uses or trusts of the deed, surrender, will, or other assurances directing such accumulations, would for the time being, if of full age, be entitled to the rents, issues, and profits, or the interest, dividends, and annual produce so directed to be accumulated. And in every case where accumulation shall be directed otherwise than as aforesaid, such direction shall be null and void, and the rents, issues, profits, and produce of such property so directed to be accumulated shall, so long as the same shall be directed to be accumulated contrary to the provisions of this act, go to and be received by such person or persons as would have been entitled thereto, if such accumulation had not been directed." Sect. 2 provides, "that nothing in this act contained shall extend to any provision for payment of debts of any grantor, settlor, or devisor, or other person or persons, or to any provision for raising portions for any child or children of any person taking any interest under any such conveyance, settlement, or devise, or to any direction touching the produce of timber or wood upon any lands or tenements; but that all such provisions shall be made and given as if this act had not passed." Sect. 3 provides that the act shall not extend to dispositions of heritable property in Scotland.

This act was passed in consequence of the will of Peter Thellusson, a Genevese by birth, but settled in London, who died in 1797, leaving a landed estate worth about 4000*l.* a year, and personal property to the amount of 600.000*l.* He devised and bequeathed this large property to trustees upon trust to accumulate the annual proceeds of his property and

invest them in the purchase of lands, during the lives of his sons, grandsons, and the issue of sons and grandsons, either living or in the womb (in ventre sa mere), at the time of his death, and the lives of the survivors and the survivor of them; and after this period to be conveyed to the lineal descendants of his sons in tail male. According to the provisions of this will, the proceeds of the property were not to be enjoyed, but to be accumulated and laid out in land during the lives of all his sons and grandsons, and the issue of sons or grandsons living, or unborn, at his death, provided such issue was then in the womb. After long litigation, it was finally decided by the House of Lords that the trusts for accumulation were legal (Thellusson *v.* Wordford, 11 Ves. 112); but the act which was passed shortly after has prevented such accumulation for a longer period than during the minority of persons living or in ventre sa mere at the time of the death of the person who so disposes of his property. The act, as it will be observed, mentions various periods, any one of which may be selected by the person who directs the accumulation of his property. There were nine lives in being at the time of Thellusson's death, and the enjoyment of the property was consequently deferred till they had all died.

The general rule of law in this country is, that a man may dispose of his property as he pleases; he may give it to whom he likes to be enjoyed; or he may give it to trustees to apply to such purposes as he pleases. But various restraints have been imposed by statutes on this general power, and the restraint upon accumulation is one of them. The Statute of Mortmain, as it is commonly called [MORTMAIN], is another instance in which the legislature has interfered with a man's general power of disposing of his property. In the case of accumulation, which a man directs to be made after his death, the limits of time now allowed seem amply sufficient for any reasonable purpose. We may conceive various good reasons against allowing a man an unlimited power of directing the accumulation of property after his death; and it is not easy to see that any mischief is likely to arise from limiting this power, as is done by this act. Another instance of this legal limitation of a man's disposition of his property is noticed under PERPETUITY.

ACHÆAN CONFEDERATION.—The Achæans, who formed that federal union which is commonly called the Achæan League, inhabited the tract which lies along the southern coast of the Corinthian gulf (Gulf of Lepanto). They formed twelve small independent states. The history of the Achæans is an inconsiderable part of the general history of Greece till about B.C. 251. During the invasion of Greece by the Persians, they took no share in the battles of Marathon, Salamis, and Platæa; nor, during the long war of twenty-seven years, did they take anything more than a kind of forced part in this protracted struggle between Athens and Sparta. At the commencement of this war (B.C. 431), they were, with the exception of Pellene, neutral; but afterwards favoured the Lacedæmonian interest, in compliance with the general feeling in the peninsula. The cause of their taking no part in the general affairs of Greece may probably have been the want of union among the twelve little states; for though they acknowledged a common origin, and had a kind of connexion, they seem not to have had any complete federal system. Yet they probably attained, at an early period, a considerable degree of prosperity and internal good policy, for the Achæans founded several flourishing colonies in Southern Italy; and the political institutions were considered preferable to those of most states, and were often imitated as a model.

During the struggles of the Southern Greeks against the successors of Alexander, the Achæans wished to remain neutral; but they ultimately became the prey of the Macedonians. Some cities were compelled to receive the garrisons of Demetrius and Cassander; and afterwards those of Antigonus Gonatas, or to submit to tyrants. There would be little in the history of the Achæan states to attract attention, were it not for the more complete federal union which arose out of these discordant elements.

Four of the western states of Achæa,

Dyme, Patræ, Tritæa, and Pharæ (Polybius, ii. 41), seeing the difficulties in which Antigonus Gonatas, King of Macedonia, was involved, formed a union for mutual protection, B.C. 281. Five years afterwards Ægium ejected its garrison, and Bura killed its tyrant, which examples moved Iocas, who was then tyrant of the neighbouring town of Ceryneia, to surrender his authority, and save his life. These three towns joined the new league. In B.C. 251, Aratus having delivered Sicyon, which was not an Achæan town, brought it over to the confederacy, of which he was elected general in B.C. 245. In 243, having driven the Macedonian garrison out of the stronghold of Corinth, which is the key of Southern Greece, this town also joined the league. Megaris, Epidaurus, and Trœzen, followed soon after. During the long career of Aratus other Peloponnesian states were included in the union; and in fact Aratus is called by Polybius the founder of the confederation. In the year B.C. 208, five years after the death of Aratus, Philopœmen was elected general of the confederacy, to which he gave a new life by his activity and wisdom. As the Romans had now humbled Philip V. of Macedonia (B.C. 197), and reduced him to the rank of a dependent king, it was their policy to weaken the power of the confederation; and this was easily effected by the Roman and anti-Roman parties, which had been for some time growing up in the Greek cities. In 191, however, Sparta became a member of the Achæan league, and the design of its leaders was to include all the Peloponnesus within its limits. After the death of Philopœmen (B.C. 183) the Roman party grew still stronger under the influence of Callicrates, and the league remained, in appearance at least, on the side of the Romans in their final struggle with Perseus, king of Macedonia, which ended in the defeat and death of the king (B.C. 168). The influence of Callicrates was now almost supreme, and, so far from opposing, he urged the Romans to demand 1000 of the noblest Achæans to be sent to Rome to answer for their conduct in the late war. Callicrates and his party had named more than 1000, of whose guilt, however, no proof was adduced; his only object was to humble the party of his opponent Lycortas. Among the accused who were sent to Rome, and there detained for seventeen years, was the historian Polybius, the son of Lycortas, and the strongest support of his father's party.

The last war of the league was with Sparta, which was brought about (B.C. 150) through the influence of Critolaus, one of those who had been detained at Rome. This, which the Romans considered as a kind of attack on themselves, joined to the contumacious treatment of the Roman commissioners at Corinth, which will be presently mentioned, induced the Republic to send L. Mummius to chastise the Achæans; and a fitter man for the purpose could not have been found. The treatment of the Roman commissioners did not tend to soften the ferocity of their barbarian opponent. The Achæan general Diæus met Mummius on the isthmus of Corinth, and fell an easy prey to the Roman general, who, after the battle, burned Corinth to the ground (B.C. 146). Mummius and ten other senators then changed Greece into the Roman province of Achæa, leaving, however, to certain cities, such as Athens, Delphi, and others, the rank of free towns. Corinth afterwards received a Roman colony.

To those who study the history of civil polity, it is a matter of some interest to trace the formation of federative systems, or those by which a number of states unite for certain general purposes, while each maintains all its sovereignty except that portion which is surrendered to the sovereignty of the united states. The object of such associations is twofold—to secure peace and a ready intercourse between all the states, and all the members of them; and secondly, to facilitate all transactions with foreign states, by means of the power given to the united body. Defence against foreign aggression is one of the main objects of such a union; while foreign conquest is, strictly speaking, incompatible with it.

The history of the Grecian states presents us with several examples of federal unions, but the Achæan confederation is better known than any other, though our information about its constitution is very defective.

Each state had an equal political rank, retained its internal regulations, and its coins, weights, and measures, though the general government also had its coins, weights, and measures, which were uniform. The ordinary general assemblies were held twice a year at Ægium (afterwards at Corinth), and they deliberated for three days. Extraordinary assemblies might meet at other places, as, for instance, at Sicyon. The general assemblies decided upon all matters which affected the general interest, on war and peace, and made all such regulations as were required for the preservation of the union. At the Spring meeting, about the time of the vernal equinox, the public functionaries were chosen; the *strategos*, or general of the confederation, was there chosen, with the *hipparchus*, or master of the horse, who held the next rank, and ten functionaries called *demiurgi:* there was also a chief priest chosen to superintend the religious affairs of the confederation. This was the time of election, during the life of Aratus at least. In the earlier times of the league they had two strategi and a secretary, as the Romans had two consuls; but, in B.C. 256, after twenty-five years' experience, it was found that one head was better than two. The strategos was elected for a single year, and appears not to have been reeligible till he had been one year out of office. But Aratus filled the office of strategos seventeen times in twenty-nine years, and Philopœmen was elected eight times in twenty-four years; Marcus of Ceryneia was the first sole strategos. If the strategos died in office, his predecessor assumed the functions till the legal meeting of the congress. The functions of the ten demiurgi are not clearly ascertained; they probably possessed the right to summon and preside in the ordinary meetings; and certainly they must have prepared the business which was to be so summarily despatched in three days. It seems that they had the power, within some limits, of referring matters to the public body or not, according to a majority of votes in their own body: they were, in fact, a committee, having a kind of initiatory (Liv. xxxii. 22). They probably also formed a kind of administrative body for the direction of affairs between the times of the public meetings. It may be asked how was the general council composed, particularly after the league comprised within itself so many states? Did the states send deputies? Had they, in fact, a representative government? It is difficult to answer this question, though we are inclined to that think there was no strict system of representation. The short time for discussion, the two yearly meetings, the general character of Greek democracy, as well as most passages in which the congress is spoken of, lead us to infer that this deliberative body consisted of every qualified citizen of the confederate states who chose to attend. It appears that all the citizens of the several states, who were thirty years of age, and rich enough not to carry on any handicraft in order to get a living, might attend the yearly meetings, speak and vote. That this, however, could only be the case with the wealthier class, and that the poor could not attend to such business so far from home, must be self-evident. It is also certain that, on extraordinary occasions, a much larger number of men assembled than was usual when things were going in a more regular course. We read of one instance when the Roman commissioners were kicked out of the congress, then sitting at Corinth, with scorn (B.C. 147); and Polybius adds, by way of explanation, "for there was assembled a number of the working class, and of those who followed mechanical occupations, greater than on any former occasion." As Corinth, however, was one of the greatest manufacturing towns of Greece, and the working class occupied a higher station there than those in most places, it is possible that the regular meeting was disturbed by a body of intruders, as we sometimes have seen at our own elections. Another passage of Polybius tells us that Eumenes offered the congress, then sitting at Megalopolis, a large sum of money, that they might, with the interest of it, pay the expenses of those who attended the congress: this would perhaps imply that the number was in some way limited. The offer of Eumenes was rejected.

Some writers have attempted to show

that the demiurgi, or senate, as they have been called, was composed of representatives, one of whom was sent by each of the twelve states; and the number of twelve is made up by including among the senate the strategos, or general, and the secretary. But this conjecture is open to many objections, and supported by feeble evidence and little probability (art. *Achaïscher Bund*, in Rotteck and Welcker, *Staats-Lexicon*). But though we are so imperfectly acquainted with the federal constitution of the Achæans, and unable to reconstruct it completely from the scanty fragments which remain, we may safely conclude that it was no inefficient union which called forth from Polybius the following commendation: "Their union is so entire and perfect, that they are not only joined together in bonds of friendship and alliance, but even make use of the same laws, the same weights, coins, and measures, the same magistrates, counsellors, and judges: so that the inhabitants of this whole tract of Greece seem in all respects to form but one single city, except only that they are not enclosed within the circuit of the same walls. In every other point, both through the whole republic, and in every separate state, we find the most exact resemblance and conformity" (Polybius, ii. 37, Hampton's translation). It might be inferred from the first part of this passage that the union was effected by the formation of one state out of many; but this inference is obviated by the concluding sentence which contrasts the whole republic with the several states: and indeed the history of the league shows that it was a federal union of independent states.

The chief authority for the history of the Achæan league is Polybius, book ii., &c.; the particular authorities are referred to in the article in Rotteck and Welcker, *Staats-Lexicon*, in Hermann, *Lehrbuch der Griechischen Staatsalterthümer*, and other modern works.

ACT. This word is a form of the Latin *actum*, from the verb *agere*, which is used generally to express the doing of any act. The Latin word Actio, from which our word Action is derived, had, among other significations, various legal meanings. Of these meanings one of the most common was the proceeding by which a man pursued a claim in a court of justice, who was accordingly in such case called the Actor. In this sense we have in our language the expression Action at law. The word Act, a thing done, is sometimes used to express an act or proceeding of a public nature, of which sense the most signal instance among us is the term Act of Parliament, which means an act in which the three component parts of the sovereign power in this country, King, Lords, and Commons, unite, in other words, a Law properly so called. The word Act is also sometimes applied to denote the record of the Act; and by the expression Act of Parliament is now generally understood the record of an Act of the Parliament, or the written record of a Law. In the French language also, the word *acte* denotes a written record of a legal act, the original document, which is either private, acte sous seing privé, which requires the acknowledgment of the parties in order to be complete evidence, or a public authenticated act, acte authentique, which without such acknowledgment is considered genuine and true. This meaning of the word Act or Acts is derived from the Romans, among whom Acta signified the records of proceedings, and especially public registers and protocols in which the acts and decrees of the public bodies or functionaries were entered, as Acta Principum, Senatus, Magistratuum. The Acta Publica, or Diurna or Acta Urbis, was a kind of Roman newspaper, or a species of public journal for all Rome, as opposed to the private journal (diurna) which, according to the old Roman love of order, each family had to keep. Augustus had one kept in his house, in which were entered the employments and occupations of the younger members of his family. Julius Cæsar established the practice of drawing up and publishing the Acta both of the senate and the people. (Suetonius, *Julius Cæsar*, 20.) Augustus subsequently forbade the publication, but not the drawing up of the Acta, and the practice of keeping such records continued, in some shape or other, even to the time

of the Emperor Julian. Only a few fragments of them are extant. They are not unfrequently referred to as authorities by the Roman writers. These Acta were journals of the proceedings of the bodies to which they belonged, and of the chief events that took place in Rome. When Suetonius says (*Augustus*, 36) that Augustus forbade the publication of the Acta of the Senate, it must not be supposed, with some critics, that the Senatus Consulta are included in the Acta.

Under the Germanic Empire the term Acta Publica denoted the official transactions of the empire, decrees and the reports of the same, which were first collected under this title by Caspar Loedorpius, Frankfort, 1629, and his continuators.

The word Acta has been used in an analogous way in other instances in modern times. The Acta Sanctorum denote generally all the old stories of the martyrs of the church; and specially, that large work, begun in 1643, by the Jesuit Bolland, and continued by his successors to 1794, in fifty-three folio volumes, which contains such accounts. The Acta Eruditorum Lipsiensia was the title of the first learned and critical review that was published in Germany, after the model of the French Journal des Savans, and the Roman Giornale de' Litterati. It was established in 1680, by Otto Mencken, a professor of Leipzig, and written in Latin. Other journals of a like kind also adopted the name of Acta. The name of Transactions is now given in England to the Acts of most learned and scientific bodies: the Acts of the Courts of Justice, so far as they are made public, are called Reports, while the proceedings of the courts as registered are called Records. (Rotteck and Welcker, *Staats-Lexicon*, art. by W.)

ACT OF PARLIAMENT. [STATUTE.]

ACTION. [ACT.]

ACTUARY, a word which, properly speaking, might mean any registrar of a public body, but which is generally used to signify the manager of a joint-stock company under a board of directors, particularly of an insurance company; whence it has come to stand generally for a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, &c. Most of those called actuaries combine both the public and private part of the character.

An actuary combines with the duties of a secretary those of a scientific adviser to the board which gives him his office, in all matters involving calculation, on which it may be supposed that the members of the board are not generally competent to form opinions themselves.

The name has a legal character from its being recognised in the statute 59 Geo. III. c. 128 (or the Friendly Societies' Act of 1819), which enacts that no justice of the peace shall allow of any tables, &c. to be adopted in any Friendly Society, unless the same shall have been approved by "two persons, at the least, known to be professional actuaries, *or persons skilled in calculation*"—a definition much too vague to be any sufficient guide. The Committee on Friendly Societies of 1825 reported that "petty schoolmasters or accountants, whose opinion upon the probability of sickness and the duration of life is not to be depended upon," had been consulted under this title, and recommended that the actuary of the National Debt Office should be the only recognised authority for the purposes above mentioned; in which recommendation the Committee of 1827 joined. In the 10 Geo. IV. c. 56, however, no alteration was made in the law on this point. By the Act of 1819, no Friendly Society can be dissolved, or any division of money made otherwise than in the ordinary course, without the certificate of two actuaries, that the interests of all the members have been consulted in the proposed dissolution or payment. The 4 & 5 Wm. IV. c. 40, which amends the above Act, provides that no distribution of the funds of any Friendly Society shall take place without a certificate from the actuary of one of the Life Assurance Offices in London appointed by the Board.

The registrar of the Lower House of Convocation is called the actuary. Bishop Gibson says that he is an officer of the archbishop, the president of the convo-

cation, and cites as follows, from the fees established by Archbishop Whitgift (1583-1603) for the vicar-general's office: —"Feoda Actuario Domus inferioris Convocationis solvenda." (Gibson's *Synodus Anglicana*, 1702.)

The word Actuary is from the Roman "actuarius," which was used in various senses; but its earlier and more common meaning was "short-hand writer." (Suetonius, *Julius Cæsar*, 55.) The actuarii militiæ, under the later empire, were persons who kept the army accounts, and had the distribution of the soldiers' rations. (Facciolati, *Lex.* art. *Actuarius.*)

In Germany an Actuary (Actuar) is that public officer who is attached to a public functionary, and, in a narrower sense, to a judicial functionary, and is qualified and sworn to note down official proceedings, and to draw up registrations and protocols, and to collect and keep the records of official acts. Acts which are approved in legal form, that is to say, after being first read over, and when the law requires it, as the Prussian law does, are signed by the parties, and are drawn up, collected, and kept by the actuary, and also the copies which are compared by him and certified as true, have public credit, or are taken as complete evidence. Both such acts and their contents are considered as genuine and true until they are proved to be false, so far as the actuary, pursuant to his authority, intends to be security for their genuineness and truth, according to the nature of the case. For example, the actuary intends that a deposition taken down in writing by him, or a memorial accepted and kept by him, is truly and completely the deposition or memorial of the party. Their truth in other respects he does not vouch for. According to the various functionaries or offices to which they are attached, actuaries have various names. When attached to ecclesiastical courts, and frequently when attached to the ordinary courts of justice, they are called Protonotarii (prothonotaries); to the higher provincial colleges, Secretaries; to public functionaries, official actuaries or official clerks (Amstactuarien, Amtschreiber). The secondary actuaries, who are subordinate to the first actuary, are often called registrars or judicial notaries. Every actuary must be an independent functionary, sufficiently qualified for his difficult office, and must have undergone an examination and be bound by oath, and as such he is responsible for the accuracy and sufficient completeness of his notes and acts. As a judicial person he can be objected to as an actuary on the ground of incapacity or of partiality, especially on the ground of near relationship to the judge. According to the general rule of law, it is necessary to the validity of a judicial protocol that both the judge should be present and a duly qualified actuary. The judge and the actuary mutually control one another. The actuary, in order that he may maintain his independence and be really responsible, is not bound to follow the dictation of the judge, except when the judge is merely uttering his own words, or putting his own questions, or giving his own proper orders. It would be an impediment to the careful consideration required of a judge, and to the independent action and mutual control exercised by the judge and actuary over each other, if the judge himself should have to perform the part of actuary; and the independent, careful, and exact discharge of the actuary's duty would be impeded, if he did not draw up the protocol as far as possible in the words of the party, and according to his own understanding of them, subject indeed to the control of the judge, and upon his own responsibility. When these forms are not duly observed, it is a sufficient ground for annulling the process and the protocol. (*Staats-Lexicon*, Rotteck and Welcker, art. by W.)

ADJUDICATION, in the law of debtor and creditor in Scotland, is a process for attaching heritable or real property. It is applicable not merely to land and its accessories, but to all rights "bearing a tract of future time," as annuities, pensions, lands, &c.; and has in general been extended to all such property capable of being applied to the liquidation of debts, as is not attachable by the simpler process of arrestment. The origin of this process of adjudication is to be

found in a very ancient practice called Apprising, by which the debtor who refused to satisfy his creditor, either with money or land, might be compelled to part with so much of the land as the award of a jury found commensurate with the debt. This form was the object of legislation so early as the year 1469, when provision was made for compelling feudal superiors to give the proper investiture to those who acquired lands by such a title. The debtor who is compelled to part with his lands under the old apprising might redeem them within seven years, but it is said that this privilege was often defeated by dexterous expedients, and that the system was a means of judicial oppression, the genuine creditor being often defeated by the collusive proceedings of the debtor's friends; and on the other hand a creditor to a mere nominal amount was often enabled to carry off a large estate. The system was amended by the Act 1672, c. 19. According to modern practice, there are two alternatives laid before the debtor in the process—that the debtor is to make over to the creditor land to the value of his debt and one-fifth more, redeemable within five years; or that the property in general against which the process is directed shall be adjudged to the creditor, liable to be redeemed within ten years, on payment of the debt, interest, &c. The latter is the alternative universally adopted. The lands do not pass into the absolute property of the adjudger at the end of the ten years without judicial intervention, in "an action of declarator of expiry of the legal," in which the debtor may call on the creditor to account for his transactions, and may redeem the property on paying any balance that may be still due.

There are arrangements for preserving equality among adjudgers, and preventing the more active creditors from carrying off all the available estate. Taking the point of time when the first process has been made effectual by certain proceedings for the completion of the adjudger's title, all others in which the decree is either prior to that event or within a year and a day after it, rank with it and with each other, and they are all preferable to posterior adjudications. (Acts 1661, c. 62; 1672, c. 19; 54 Geo. III. c. 137, §§ 9—11.) When there are so many adjudications in process against an estate that it may be considered as bankrupt, while the debtor does not come within the class of persons liable to mercantile bankruptcy, it is usual to sweep all the operations into one process called a "Judicial Sale and Ranking." A factor or assignee is appointed, under judicial inspection, and, to a certain extent, but very imperfectly, the property is realized and distributed among the creditors after the manner of a bankrupt estate. (Acts 1681, c. 17; 1695, c. 24; 54 Geo. III. c. 137, §§ 6, 7; Act. Sed. 22nd Nov. 1711; 17th Jan. 1756; 11th July, 1794.) Where sequestration has been awarded against a person liable to mercantile bankruptcy, the award involves an adjudication of the bankrupt's adjudgeable property from the date of the first deliverance. (2 & 3 Vict. c. 41, § 82.)

The form of an adjudication has long been in use for the completion of defective titles to landed property, and when so employed it is called "Adjudication in implement."

ADJUSTMENT, in marine insurance, is the settling and ascertaining the exact amount of indemnity which the party insured is entitled to receive under the policy, after all proper allowances and deductions have been made; and fixing the proportion of that indemnity which each underwriter is liable to bear. The contract of insurance is an agreement to indemnify the insured against such losses as he may sustain by the occurrence of any of the events which are expressly, or by implication of law, contained in the policy. Thus, when a ship is lost, or any of those contingencies arise against which the insurance provides, the owner of the ship or of the goods insured, as the case may be, or an authorized agent, reports the circumstance to the insurers or underwriters. In London, this notice is given by an insertion in a book kept at Lloyd's Coffee-House in the subscription-rooms, where the greater part of marine insurances are effected.

Before any adjustment is made, the underwriters require to be informed of all

particulars, that they may be satisfied the loss has occurred through circumstances against which the insurance was effected. In ordinary cases the task of ascertaining these facts, and of examining the correctness of the demand made by the assured, rests with the underwriter who has first subscribed the policy. In complicated cases of partial or average losses, the papers are usually referred to some disinterested party, whose business it is to undertake such references, to calculate and adjust the per centage rate of loss. Where the ship is wholly lost, of course little difficulty occurs in this part of the inquiry; but in cases of partial losses, where the insured has not exercised his right of abandonment [ABANDONMENT], very minute and careful examination often becomes necessary. The quantity of damage being ascertained, the amount which each underwriter has made himself liable to by subscribing the policy is settled; and this being done, it is usual for one of the underwriters, or their agent, to indorse on the policy, "adjusted a partial loss on this policy of so much per cent." To this indorsement the signature of each underwriter must be affixed, and this process is called the adjustment of the loss.

After an adjustment has been made, it is not usual in mercantile practice for the underwriter to require any further proof, but at once to pay the loss; and it has been said that the reason for which adjustments have been introduced into the business of maritime insurance is, that upon the underwriter signing an adjustment, and thereby declaring his liability, and admitting that the whole transaction is adjusted, time should be given him to pay the money. As a question of law, however, it is undecided how far the adjustment is conclusive and binding upon the underwriters; the better opinion appears to be that the adjustment is merely presumptive evidence against an insurer, and has only the effect of transferring the burden of proof from the assured to the underwriters; that is, where an adjustment has taken place, and the liability to pay the loss is disputed, the adjustment alone, without further proof, will be sufficient to entitle the insured to recover in an action on the policy, unless the underwriter shows facts which may have the effect of relieving him from liability. (Selwyn's *Nisi Prius*, title "Insurance;" Park, on the *Law of Marine Insurance*, and a note to Campbell's *Nisi Prius Reports*, vol. i. p. 276.)

ADJUTANT (from the Latin *adjutor*, an assistant) is a military officer, attached to every battalion of a regiment. The office does not confer a separate rank, but is usually given to one of the subaltern officers. The duties of an adjutant are to superintend (under the major of the regiment, and the adjutant-general of the army) all matters relating to the ordinary routine of discipline in the regiment; to receive and promulgate to the battalion all general, garrison, and regimental orders, signing them in the orderly-book on the part of the commanding-officer; to select detachments from the different companies when ordered; to regulate the placing of guards, distribution of ammunition, &c.

ADJUTANT-GENERAL, a staff-officer, one of those next in rank to the commander-in-chief. He is to the army what the adjutant is to a regiment; he superintends the details of all the dispositions ordered by the commander-in-chief, communicates general orders to the different brigades, and receives and registers the reports of the state of each, as to numbers, discipline, equipments, &c. Though in a large army the adjutant-general is usually a general officer, yet this rank is not necessary; and in smaller detachments acting independently the duties are frequently intrusted to an officer of lower rank.

ADMINISTRATION and ADMINISTRATOR. An administrator is a person appointed by the ordinary or bishop of the diocese to make administration of or to distribute the goods of a person who dies without having made a will. It is said that, in very early times, the king was entitled in such a case to seize upon the goods, in order that they might be applied to the burial of the deceased, the payment of his debts, and to making a provision for his family. It would appear that this power of the crown over the effects of intestates was greatly abused, for, by Magna Charta, King John granted that "if a freeman should die intestate,

his chattels should be distributed by the hands of his near relations and friends, under the inspection of the church." This, probably, formed the foundation upon which the bishops afterwards founded their right to administer by their own hands the goods of an intestate. There is, at least, no doubt that the power of seizing the goods of an intestate was, at a later period, transferred from the crown to the bishops. The whole property was, in the first instance, placed in the custody of the ordinary, or bishop of the diocese in which the intestate died; and after the deduction of what were technically called "*partes rationabiles*," that is, two-thirds of the whole, which the law gave to the widow and children, the remaining third part vested in the bishop upon trust to distribute that proportion in charity to the poor, or in "pious uses," for the benefit of the soul of the deceased. This trust being greatly abused by the bishops, the statute called the "Statute of Westminster the Second," was passed in the reign of Edward I., which provided that the debts of the deceased should be paid by the ordinary in the same manner as if he had been an executor appointed by a will. The remainder, after payment of debts, still continued applicable to the same uses as before. To prevent the abuses of the power thus retained by the ordinary, and to take the administration out of his hands, the statute of 31 Edward III. cap. 2, directed the ordinary, in case of intestacy, to depute "the nearest and most lawful friends" of the deceased to administer his goods; and these administrators are put upon the same footing with regard to suits and to accounting, as executors appointed by will. This is the origin of administrators; they are merely the officers of the ordinary, appointed by him in pursuance of the statute, which selects the nearest and most lawful friend of the deceased; these words being interpreted to denote the nearest relation by blood who is not under any legal disability. The subsequent statute of 21 Henry VIII. c. 5, enlarges a little more the power of the ordinary, and permits him to grant administration either to the widow or the next of kin, or to both of them; and, where several persons are equally near of kin, empowers him to select one of them at his discretion.

If none of the kindred are willing to take out administration, a creditor is permitted to do so; and in the absence of any person entitled to demand letters of administration, the ordinary may appoint whomsoever he may think proper to collect the goods of the deceased, for the benefit of such as may be entitled to them. Administrators are appointed even when a will has been made, if by the will no executors are appointed, or if the persons named in it refuse, or are not legally qualified to act; and in any of these cases the administrator only differs from an executor in the name of his office and mode of his appointment. In practice, when the executor refuses to act, it is usual to grant administration to the residuary legatee, that is, to the person to whom, by the will, the remainder of the personal property, after payment of debts and legacies, is given.

In the case of a complete intestacy, it was formerly doubted whether an administrator, when appointed by virtue of 31 Edward III., could be compelled to make any distribution of the effects of the intestate which remained in his hands after payment of debts; for though the administration had been transferred from the ordinary to the next of kin of the deceased, the new administrator stood in much the same position as the ordinary had. The spiritual courts endeavoured to enforce distribution by taking bonds from the administrator for that purpose, but these bonds were declared void by the common law courts. The "Statute of Distributions," 22 & 23 Charles II. c. 10, which is amended by 29 Car. II. c. 3, enacted that the surplus effects, after payment of debts, shall, after the expiration of one year from the death of intestate, be distributed in the following manner:—one-third shall go to the widow, and the remainder in equal proportions to the children of the intestate, or, if dead, to their legal representatives, that is, their lineal descendants: or, if there be no children, or children's legal representatives, then one moiety shall go

to the widow, and the other moiety to the next of kin in equal degree, or to their representatives: if no widow, the whole shall go to the children or their representatives in equal portions: if neither widow nor children, the whole shall be distributed amongst the next of kin or their representatives. The statute of 29 Charles II. c. 3, confirms the old right of the husband to be the administrator of his wife who dies intestate, and to recover and enjoy her personal property.

By the same statute it is directed that no child of the intestate (except it be his heir at law) on whom he settled in his lifetime any estate in lands, or to whom he gave a pecuniary portion equal to the distributive share of the other children, shall have any share of the surplus to be administered; but if the estate or portion thus given him by way of advancement is not equivalent to the other shares, the child so advanced shall have so much of the intestate's personal estate as will put him on an equality with his brothers and sisters.

The Statute of Distributions expressly excepts and reserves the customs of the city of London, of the province of York, and of all other places which have peculiar customs of distributing intestates' effects. These customs resemble, in some degree, the provisions of the statute, though they differ from them in some respects.

The degrees of kindred are reckoned according to the Roman law in the application of the Statute of Distributions [CONSANGUINITY]; and many of the provisions of the statute as to the mode of distribution resemble those of the Roman law of Justinian's period. (*Novel.* 118; and Gaius, iii. *On the Succession to Intestates' Estates.*)

For further information upon the subject of Administrator and Administration, see EXECUTORS.

ADMIRAL, the title of the highest class of naval officers. Various fanciful etymologies of the word have been given; but the word is said to be merely a corruption of the Arabic *Amir* or *Emir*, a lord or chieftain. The *al* is the Arabic definite article *al* (the), without the noun to which it belongs. Eutychius, Patriarch of Alexandria, writing in the tenth century, calls the Caliph Omar *Amirol Mumenim*, which he translates into Latin *Imperator Fidelium* (the Commander of the Faithful). To form the word Admiral the first two terms of some title similar to this have been adopted, and the third has been dropt. From this it appears that the word ought properly to be written, or rather ought at first to have been written, Amiral, or Ammiral, as we find it in Milton's expression:—

> "The mast
> Of some great Ammiral."

Milton, holding to this principle of orthography, wrote in Latin *Ammiralatûs Curia* (the Court of Admiralty). The French say *Amiral*, and the Italians *Ammiraglio*. The *d* seems to have got into the English word from a notion that Admiral was an abridgment of *Admirable*. The Latin writers of the middle ages sometimes, apparently from this conceit, style the commander of a fleet *Admirabilis*, and also *Admiratus*. The Spaniards say *Admirante* or *Almirante*.

Under the Greek empire, the term *Emir* or *Amir* (Αμηρ) was used most commonly to designate the governor of a province or district, which was itself called Αμηραδιας. Gibbon states that the emir of the fleet was the third in rank of the officers of state presiding over the navy; the first being entitled the *Great Duke*, and the second the *Great Drungaire*. (*Decline and Fall*, ch. liii.) The holy wars of the twelfth and thirteenth centuries seem to have introduced the term Admiral into Europe. The Admiral of Sicily is reckoned among the great officers of state in that kingdom in the twelfth century; and the Genoese had also their admiral very soon after this time. In France and England the title appears to have been unknown till the latter part of the thirteenth century: the year 1284 is commonly assigned as the date of the appointment of the first French admiral; and the *Amiral de la Mer du Roy d'Angleterre* is first mentioned in records of the year 1297. The person to whom the title is given in this instance is named William de Leybourne. Yet at this time England, although she had an

admiral, had, properly speaking, no fleet; the custom being for the king, when he engaged in a naval expedition, to press into his service the merchant-vessels from all ports of the kingdom, just as it is still the prerogative of the crown to seize the men serving on board such vessels. This circumstance is especially deserving of notice, as illustrating what an admiral originally was. The King of England's admiral of the sea was not necessarily the actual commander of the fleet; he was rather the great officer of state, who presided generally over maritime affairs. Sometimes he was not a professional person at all; at other times he was one of the king's sons, or other near kinsman yet in his nonage, on whom the office was bestowed, as being one of great dignity and emolument: the duties were performed by persons who acted in his name. But these duties were usually not to command ships in battle, but merely to superintend and direct the naval strength of the kingdom, and to administer justice in all causes arising on the seas. The former of these duties is now executed by the department of government called the Admiralty, and the latter by the legal tribunal called the High Court of Admiralty.

Anciently, two or more admirals used often to be appointed to exercise their powers along different parts of the coast. Thus in 1326 mention is made of the Admiral of the King's Fleet, from the mouth of the Thames northward, and of another officer with the same title, commanding from the mouth of the Thames westward. Besides these, there were also Admirals of the Cinque Ports. There are still a vice-admiral and a rear-admiral of the United Kingdom, which places are now sinecures, and are usually bestowed upon naval officers of high standing and eminent services. They are appointed by royal patent, and it is said would exercise the authority of the Lord High Admiral in case of his death, until a successor was appointed. There is also a vice-admiral of the coast of Yorkshire, a nominal office, usually given to a nobleman. It is the opinion of some writers that the first admiral of all England was appointed in the year 1387. Even the officer bearing this title, however, was not then the person possessing the highest maritime jurisdiction. Above him there was the King's Lieutenant on the Sea (*Locum tenens super Mare*). Also, before the term Admiral was used at all, there was an officer designated the Custos Maris, or Guardian of the Sea.

From the year 1405 (the sixth of Henry IV.) there is an uninterrupted series of Lord High Admirals of England, the office being always held by an individual, till the 20th of November, 1632, when it was for the first time put in commission: all the great officers of state were the commissioners. During the Commonwealth, the affairs of the navy were managed by a Committee of Parliament, till Cromwell took the direction of them himself. On the Restoration, the king's brother, the Duke of York, was appointed Lord High Admiral; and he retained the place till the 22nd of May, 1684, when Charles took it into his own hands. On the duke's accession to the throne, in the beginning of the following year, he declared himself Lord High Admiral. On the Revolution the office was again put in commission; and it continued to be held in this form till 1707, when Prince George of Denmark was appointed Lord High Admiral, with a council of four persons to assist him. On his death, in November, 1708, the Earl of Pembroke was appointed his successor, with a similar council. The earl resigned the office in 1709, since which time, till now, it has always been in commission, with the exception of the period of about sixteen months (from May, 1827, till September, 1828), during which it was held by King William IV., then Duke of Clarence. The commissioners, styled the Lords Commissioners of the Admiralty, were formerly seven, and are now six in number; and the first Lord is always a member of the cabinet. It is the First Lord, indeed, who principally exercises the powers of the office. The patent constituting the commission is issued by writ of privy seal, in the king's name, and, after mentioning the names of the commissioners, it appoints them to be "our commissioners for executing the office of

our High Admiral of our said united kingdom of Great Britain and Ireland, and of the dominions, islands, and territories thereunto belonging, and of our High Admiral of Jamaica, Barbadoes, Saint Christopher, Nevis, Montserrat, Bermudas, and Antegoa, in America, and of Guiney, Binny, and Angola, in Africa, and of the islands and dominions thereof, and also of all and singular our other foreign plantations, dominions, islands, and territories whatsoever, and places thereunto belonging, during our pleasure; giving, and by these presents granting unto you, our said commissioners, or any two or more of you, during our pleasure, full power and authority to do, execute, exercise, and perform all and every act, matter, and thing which do belong or appertain to the office of our High Admiral," &c., as well in those things which concern the navy as in the things which concern "the right and jurisdiction" of the High Admiral.

Till the reign of Queen Anne the salary of the Lord High Admiral was only 300 marks; and the emoluments of the place, which were very large, arose chiefly from perquisites, or droits, as they were called, of various descriptions. Prince George of Denmark resigned all these droits into the hands of the crown, and received in their stead a salary of 7000*l.* a year. The salary of the First Lord is 4500*l.*, and his official residence is the Admiralty, Whitehall. The salary of the junior lords is 1000*l.*, and they have official residences; or, in case of the government not appropriating to them an official residence, a sum of 200*l.* is allowed instead.

The title of Admiral is also given in modern times to naval officers of the highest rank; of which we have in England three classes, namely, Admirals of the Red, of the White, and of the Blue. Admirals bear their flag at the main top-gallant-mast head; vice-admirals, at the fore top-gallant-mast head; and rear-admirals, at the mizen top-gallant-mast head. After the union with Scotland in 1707, the use of the red flag was discontinued, the union-jack being substituted for it; but it was resumed at the naval promotion which took place in 1805, after the battle of Trafalgar. There are also vice-admirals and rear-admirals of each flag, the former ranking with lieutenant-generals, and the latter with major-generals in the army. The number of admirals in each class, in May, 1844, was as follows:—

	Of the Red.	Of the White.	Of the Blue.
Admirals . .	9	13	14
Vice-Admirals	14	14	18
Rear-Admirals	28	30	38

A full admiral ranks with a general, and an admiral who is actually the commander-in-chief of a fleet with a field-marshal. The title of Admiral of the Fleet is merely an honorary distinction. The number of admirals on the 1st of January in each of the following years was as follows:—242 in 1815; 228 in 1819; 236 in 1825; 228 in 1830; 211 in 1837; and 211 in 1841. The average age of officers promoted to the rank of rear-admiral (omitting fractional parts of a year) was forty-seven years in 1815; fifty-one in 1819; fifty-five in 1825; fifty-eight in 1830; sixty-one in 1837; and rather more than sixty-one in 1841. The period which rear-admirals had served as captains had increased from nineteen years in 1815 to nearly thirty-five years in 1841; the increase having been from twenty-nine years nine months in 1830 to thirty-four years and nine months in 1841. According to the official Navy List for April, 1844, there were, in addition to the admiral of the fleet, who receives sea-pay of 6*l.* per day, thirty-six admirals, with the *sea-pay* of 5*l.* per day; forty-six vice-admirals, with the pay of 4*l.* per day; and ninety-six rear-admirals, with the pay of 3*l.* per day; making 179 admirals; but the number in commission in time of peace is only about twelve. In addition to this pay, every commander-in-chief receives a further sum of 3*l.* per day while his flag shall be flying within the limits of his station. The full pay of admirals in 1792 was 3*l.* 10*s.* a day; vice-admirals, 2*l.* 10*s.*; rear-admirals, 1*l.* 15*s.*: in addition to which, compensation in lieu of servants' allowances was given at the rate of 430*l.* 3*s.* a year to admirals; 280*l.* 5*s.* to vice-admirals; and 202*l.* to rear-admirals. The number of servants allowed was re-

duced in 1693; but in 1700 the regulation was rescinded, and by an Order in Council fifty servants were allowed to the Admiral of the Fleet; thirty to admirals; twenty to vice-admirals; and fifteen to rear-admirals. The *half-pay* of the Admiral of the Fleet is at present 1149*l.* 15*s.* per annum; of admirals, 766*l.* 10*s.*; of vice-admirals, 593*l.* 2*s.* 6*d.*; and of rear-admirals, 456*l.* 5*s.* The half-pay of the Admiral of the Fleet was 2*l.* 10*s.* per diem in 1792; that of admirals, 1*l.* 15*s.*; vice-admirals, 1*l.* 5*s.*; and of rear-admirals, 17*s.* 6*d.* (*Report on Army and Navy Appointments.*)

There is no officer with the title of admiral in the navy of the United States of America, the rank corresponding to it being that of commodore, which is given to captains commanding on stations.

ADMIRALTY COURTS are courts which have jurisdiction over maritime causes, whether of a civil or criminal nature. In England, the Court of Admiralty is held before the Lord High Admiral or his deputy, who is called the judge of the court: when there was a Lord High Admiral, the judge of the Admiralty usually held his place by patent from him; but when the office of admiral is executed by commissioners, he holds his place by direct commission from the crown under the great seal.

The Court of Admiralty is twofold,—the Instance Court and the Prize Court. The commissions to hold these courts are perfectly distinct, but are usually given to the same person. Neither of them is a Court of Record.

The civil jurisdiction of the Instance Court extends generally to marine contracts, that is, to such contracts as are made upon the sea, and are founded in maritime service or consideration,—as where the vessel is pledged during the voyage for necessary repairs; and to some few others, which, though entered into on land, are executed entirely upon the sea,—such as agreements for mariner's wages. But if part of a cause of action arises on the sea and part upon the land, the courts of common law exclude the Admiralty Court from its jurisdiction; and even in contracts made abroad they exercise in most cases a concurrent jurisdiction. The Admiralty Court has no cognizance of contracts under seal, except where, from the nature of the subject matter, it has exclusive jurisdiction; as in the case of an hypothecation bond, under which a ship is given in pledge for necessaries furnished to the master and mariners. This security, as it only affects the vessel on which the money is advanced, and imposes no personal contract on the borrower, does not fall within the cognizance of the common law. The Instance Court likewise regulates many other points of maritime law, such as disputes between part-owners of vessels, and questions relating to salvage, that is, the allowance made to those who have saved or recovered ships or goods from dangers of the sea. It has also power to inquire into certain wrongs or injuries committed on the high seas, such as collision, or the running foul of one ship against another, and in such cases to assess the damages to be paid to the party injured.

This court is usually held at Doctors'-Commons, like the ecclesiastical courts, to which, in its general constitution, it bears a great resemblance. The law by which its proceedings are governed is composed of such parts of the civil law as treat of maritime affairs, together with the laws of Oleron and other maritime laws, with such corrections, alterations, or amendments as have been introduced by Acts of Parliament, or usage which has received the sanction of legal decisions. (Blackstone, *Commentaries*, iii. 68, 106.)

In criminal matters the Court of Admiralty has, partly by common law, partly by a variety of statutes, cognizance of piracy and all other indictable offences committed either upon the sea or on the coasts, when beyond the limits of any English county; and this (at least since the time of Edward III.) to the exclusion of the jurisdiction of the courts of common law. With respect to certain felonies, committed in the main stream of great rivers below the bridges, the common law and the Admiralty have a concurrent jurisdiction.

The mode of proceeding in the Admiralty courts in criminal trials, like that in all other suits there, was anciently

according to the course of the civil and maritime law, until, in the reign of Henry VIII., a statute was passed which enacted that these offences should be tried by commissioners of oyer and terminer under the king's great seal, and that the proceedings should be according to the law of the land. (Blackstone, *Commentaries*, iv. 268; Hale, *Pleas of the Crown*, ii. 16.) By 7 & 8 Geo. IV. c. 28, all offences tried in the Court of Admiralty are to be punished in the same manner as if committed on land. (§ 12). A similar provision is introduced in 9 Geo. IV. c. 31, for consolidating and amending the law relating to offences against the person. (§ 32). In the act for establishing the Central Criminal Court in London (4 Wm. IV. c. 36), the judges are empowered to determine offences committed within the jurisdiction of the Admiralty of England, and to deliver the gaol of Newgate of any person committed for any such offence. (§ 22). The Admiralty sessions are held twice a year, in March and October, at the Old Bailey. The judge of the Admiralty presides, and two of the common law judges sit with him. The proceedings do not usually occupy more than three or four days in the year.

By 3 & 4 Vict. c. 65, which is an act "to improve the practice and extend the jurisdiction of the High Court of Admiralty of England," the Dean of Arches is empowered to sit as assistant to or in place of the judge of the court; and advocates, surrogates, and proctors of the Court of Arches are admitted in the Court of Admiralty. The judge of the Admiralty is empowered to make rules of court, and is to enjoy all the privileges which pertain to the judges of the superior courts. There is a clause which enables the court to try any questions concerning booty of war which may be referred to it by the Privy Council. The court is empowered to adjudicate on claims for services and necessaries to any ships which may not have been on the high seas, but within the body of a county, at the time when such services were rendered. Evidence may be taken *vivâ voce* in open court, or before commissioners. The court can direct issues on questions of fact arising in any suit to be tried before some judge of the superior courts of common law; and is empowered to direct new trials, or to grant or refuse them; the exercise of the last-mentioned right to be subject to appeal. Other alterations are made, for which reference should be made to the act.

The Prize Court is the only tribunal for deciding what is, and what is not, lawful prize, and for adjudicating upon all matters civil and criminal relating to prize. By "prize" is to be understood every acquisition made *jure belli* (by the law of war), which is either itself of a maritime character, or is made, whether at sea or by land, by a naval force. All acquisitions by war belong to the sovereign power in the state, but are usually, by the law of each particular state (as in England by several acts of parliament), distributed in certain proportions among the persons who took or assisted in taking them. But the property in the thing captured is held by English jurists, agreeably to the general practice of the law of nations, not to be absolutely taken from the original owners, until, by the sentence of a properly authorized court, it has been condemned as lawful prize. We had, as it should appear, no court authorized to adjudicate on property captured by land-forces, or *booty*, as it is commonly termed by writers on the law of nations; but, when occasion required, commissioners were specially appointed for the purpose. The 3 & 4 Vict. c. 65, enacts that the High Court of Admiralty shall have jurisdiction to decide all matters and questions concerning booty of war when referred to it by the Privy Council. (§ 22.) But property captured by the naval force forms the peculiar province of the Prize Court of the Admiralty. "The end of a Prize Court," says Lord Mansfield, "is to suspend the property till condemnation; to punish every sort of misbehaviour in the captors; to restore instantly, if upon the most summary examination there does not appear sufficient ground; to condemn finally, if the goods really are prize, against everybody, giving everybody a fair opportunity of being heard." (Douglas's *Reports*, p. 572, &c.) The Prize Court has also jurisdiction in matters of capture in port or on land, when the

capture has been effected by a naval force, or a mixed naval and military force.

Vessels taken under the treaties for the suppression of the slave-trade are adjudicated by a mixed commission, composed of English and foreign commissioners.

In 1840 an act was passed (3 & 4 Vict. c. 66) to make provision for the judge, registrar, and marshal of the Court of Admiralty. It fixes the salary of the judge at 4000*l.*, with a retiring pension of 2000*l.* after fifteen years' service, or on becoming permanently disabled from performing his duties. It also prohibits the judge from sitting in parliament. The salary of the registrar is 1400*l.*, without fees. In time of war, or in case of a great increase of business, the registrar's salary may be increased to 2000*l.* He must perform his duties personally; but if, in case of illness or absence, he neglects for two days to appoint a deputy, the judge is empowered to appoint one, and to fix his salary, which is to be paid out of the salary of the registrar. The registrar is appointed by the judge, and must be a proctor of not less than ten years' standing. In case of necessity, the judge may direct the registrar to appoint an assistant, subject to the approval of the judge, with a salary of 1200*l.* One of the duties of the registrar is to attend the hearing of appeals before the Privy Council, instead of the registrars of the Court of Chancery, on whom this duty devolved under 3 & 4 Wm. IV. c. 41. The marshal's salary is 500*l.*, without fees, and may be increased to 800*l.* in time of war, or if the business of the court should increase sufficiently. The fees of the court are carried to an account called the fee fund, out of which all the officers are paid except the judge.

The business and fees of the Court of Admiralty are always much greater in time of war. From 1778 to 1782 Judge Marriot received 4500*l.* a year, the salary being 800*l.*, and the fees averaging 3700*l.* a year. On the return of peace his salary was increased to 980*l.*; and his total income during the peace averaged 1380*l.* a year. In 1794 the salary of the office was increased by the addition of 400*l.* a year. In the first ten years of the French revolutionary war, the income of Sir W. Scott averaged 5700*l.* a year, the salary being 2500*l.* and the fees 3200*l.* About a thousand cases a year were determined by the court during the war. (Evidence of Dr. Nichol before Select Committee on Admiralty Courts, in 1833; reprinted in 1843 by order of the House of Commons.) The Prerogative and Admiralty Courts were presided over by one judge on two occasions in the last century, from 1710 to 1714, and from 1773 to 1778. The Parliamentary Committee of 1833 recommended that the two judges of these courts should sit interchangeably, when occasion may require, either in one court or the other.

All sovereign states which are engaged in maritime war establish Admiralty Courts, for the trial of prizes taken by virtue of the commissions which they have granted. In determining prize cases, the Admiralty proceed on certain general principles which are recognised among civilized nations. Thus the commission which empowers the Prize Court to determine cases of prize, requires it to "proceed upon all and all manner of captures, seizures, prizes, and reprisals of ships and goods, which are or shall be taken, and to hear and determine according to the course of the Admiralty and the law of nations."

The Court of Admiralty for Scotland was abolished by 1 Wm. IV. c. 69. The representative of the nominal head of the court (the Lord High Admiral) was the judge; and there were inferior Admiralty jurisdictions, in which the law was administered by admirals-depute. The cases formerly brought before this court are now prosecuted in the Court of Session, or in that of the sheriff, in the same way as ordinary civil causes. The Court of Justiciary has become the tribunal for the decision of the more important maritime offences. The inferior jurisdictions not dependent on the High Court of Admiralty were not abolished by the above act. (Burton's *Laws of Scotland.*) There is an Admiralty Court in Ireland, but a prize commissioner has never been sent to it. By § 108 in the Corporations Reform Act (5 & 6 Wm. IV. c. 76) all chartered Admiralty jurisdictions were abolished, but that of the Cinque Ports,

attached to the office of Lord Warden, was expressly reserved. In several of our colonies there are Courts of Vice-Admiralty, which not only have authority both as Instance Courts and Prize Courts, but have also, in certain revenue cases, concurrent jurisdiction with the colonial Courts of Record. (Stokes, *On the Colonies*, p. 357.) From the Vice-Admiralty Courts of the colonies an appeal lies, in instance causes, to the Court of Admiralty in England; and from the Court of Admiralty in England an appeal lies, in instance causes (whether originating in that court or coming before it by appeal), to the king in council; to which body the powers in maritime as well as ecclesiastical causes were transferred from the High Court of Delegates by 2 & 3 Wm. IV. c. 92. From prize causes, whether in the Vice-Admiralty Courts or in the Court of Admiralty in England, the appeal lies directly to certain commissioners of appeal in prize causes, who are appointed by the king under the great seal, and are usually members of his privy council, and whose appointment is generally regulated or recognised by treaties with foreign nations.

For the law on the whole of this subject, see Dr. Browne's *View of the Civil Law*, and the *Law of the Admiralty*; and Comyn's *Digest*, tit. "Admiralty."

ADMIRALTY, DROITS OF. [DROITS OF ADMIRALTY.]

ADOPTION, from the Latin *adoptio*. By the Roman law, if a person had no children of his own, he might make those of any other person his children by adoption. The relation of father and son at Rome originally differed little from that of master and slave. Hence, if a person wished to adopt the son of another, the natural father transferred (mancipated) the boy to him by a formal sale before a competent magistrate, such as the prætor at Rome, and in the provinces before the governor. [MANCIPATION.] The father thus conveyed all his paternal rights, and the child, from that moment, became in all legal respects the child of the adoptive father. If the person to be adopted was his own master (sui juris), the mode of proceeding was by a legislative act of the people in the comitia curiata. This was called *adrogatio*, from *rogare*, to propose a law. In the case of adrogatio, it was required that the adoptive father should have no children, and that he should have no reasonable hopes of any. In either case the adopted child became subject to the authority of his new father; passed into his family, name, and sacred rites; and was capable of succeeding to his property. Clodius, the enemy of Cicero, passed by this ceremony of adrogatio from the patrician to the plebeian class, in order to qualify him to be tribune.

The history of Rome abounds with instances of adoption. Thus one of the sons of L. Æmilius Paulus, the conqueror of Macedonia, was adopted by the son of Scipio Africanus the Elder, and thus acquired the name of Publius Cornelius Scipio; he was also called Æmilianus, to point out the family of his birth; and when he had destroyed Carthage, in the third Punic war, he received, like his adoptive grandfather, the appellation of Africanus, and is usually spoken of in history as Scipio Africanus the Younger.

Women could not adopt a child, for by adoption the adopted person came into the power, as it was expressed, of the adopter; and as a woman had not the parental power over her own children, she could not obtain it over those of another by any form of proceeding. Under the emperors it became the practice to effect adrogatio by an Imperial Rescript, but this practice was not introduced till after the time of Antoninus Pius (A.D. 138-161).

There was also adoption by testament: thus Julius Cæsar the Dictator adopted his great nephew Octavius, who was thenceforth called Caius Julius Cæsar Octavianus, until he received the appellation of Augustus, by which he is generally known. But this adoption by testament was not a proper adoption, and Augustus had his testamentary adoption confirmed by a Lex Curiata. Augustus in his lifetime adopted his stepsons Tiberius Nero and Claudius Drusus, the former of whom succeeded him in the empire. (Tacitus, *Ann.* i. 3; Suet. *Tiberius*, 15.) Tiberius, by the order and during the lifetime of Augustus, adopted his nephew Germanicus, though

Tiberius had then a son of his own. Germanicus died in the lifetime of Tiberius; and on the death of Tiberius, Caligula, the son of Germanicus, became emperor. These adoptions by Augustus and Tiberius were designed to secure the succession to the imperial power in their family. At a subsequent period, the emperor Claudius adopted his step-son Domitius, afterwards the Emperor Nero, to the prejudice of his own son Britannicus. Tacitus remarks that Nero was the first stranger in blood ever adopted into the Claudian Gens. (Tacitus, *Ann.* xii. 25.) In the time of Augustus, the Julian law on marriage was enacted (B.C. 18), which contained heavy penalties upon celibacy, and rewards for having children. This law was so extremely unpopular, that, Suetonius says, it could not be carried until some of the obnoxious clauses were modified. (Suetonius, *Aug.* 34.) Afterwards. however, a law passed, called, from the Consuls who proposed it, Lex Papia Poppæa; and sometimes Lex Julia et Papia Poppæa, because it was founded on the Julian law on marriage, by which many privileges were given to those who had children; and among other things, it was declared that, of candidates for prætorships and other offices, those should have the preference who had the greatest number of children. This occasioned an abuse in the adoption of children. Tacitus says that in the time of Nero a "pestilent abuse was practised by childless men, who, whenever the election of magistrates or the allotment of provinces was at hand, provided themselves with sons by fraudulent adoptions; and then when, in common with real fathers, they had obtained prætorships and provincial governments, they instantly released themselves from their adopted sons. Hence the genuine fathers betook themselves with mighty indignation to the senate," and petitioned for relief. This produced a Senatus consultum, that fraudulent adoptions should not qualify for public office or capacitate a person for taking property by testament. (Tacitus, *Annal.* xv. 19.)

The eleventh title of the first book of Justinian's Institutes is concerning adoption. The Imperial legislation altered the old law of adoption in several respects. It declares that there are two kinds of adoption: one called *adrogatio*, when by a rescript of the emperor (*principali rescripto*) a person adopts another who is free from parental control; the other, when by the authority of the magistrate (*imperio magistratus*) he who is under the control of his parent is made over by that parent to another person, and adopted by him either as his son, his grandson, or a relation in any inferior degree. Females also might be adopted in the same manner. But when a man gave his child to be adopted by a stranger, none of the parental authority passed from the natural to the adoptive father; the only effect was, that the child succeeded to the inheritance of the latter if he died intestate. It was only when the adopter was the child's paternal or maternal grandfather, or otherwise so related to him as that the natural law (naturalia jura) concurred with that of adoption, that the new connection became in all respects the same with the original one. It was also declared that the adopter should in all cases be at least eighteen years older than the person whom he adopted. Women were not empowered by the legislation of Justinian to adopt; but after having lost children of their own by death, they might by the indulgence of the emperor be permitted to receive those of others in their place. A slave, on being named a son by his master before a magistrate, became free, but acquired no filial rights.

Adoption (εἰσποίησις, ποίησις, θέσις) was common among the Athenians, and a man might adopt a person either in his lifetime or by his testament, and either a male or a female. The adopted person was transferred by the adoption from his own family and his own demos, to those of the adopter.

Adoption was no part of the old German law: it was introduced into Germany with the Roman law, in the latter part of the middle ages. The general rules concerning adoption in Germany are as follow; but there are some variations established by the law of the several states.

The man who wishes to adopt must have no children of his own, or the adop-

tion must not be disadvantageous to them. As the act of adoption is an imitation of the natural relation of parent and child, and intended to supply its deficiencies, the adopter must be at least eighteen years older than the person to be adopted, and for the same reason he must not have been intentionally castrated. The guardian cannot adopt his ward before he has accounted for his guardianship; and as a general rule a poor man cannot adopt a rich man. The adopter must have attained a considerable (it is not said what) age, or for other reasons have no hopes of children of his own. The transaction must take place before the competent jurisdiction, and in the case of the adrogation or adoption of women, the approbation of the prince is required. It is also necessary to have the consent of the parents and other ancestors who have hitherto had the child in their power, and as such would for the future be entitled to the same right; and also the consent of the child to be adopted. In the case of Adrogation, when the person to be adopted is a minor, there must also be an inquiry whether the adrogation is advantageous to him; the consent of the next of kin and guardians of the person to be adrogated, and security on the part of the adrogator, that in case the child dies in his minority, he shall transfer the property to the nearest kinsman, or to a person substituted by the natural father.

The effects of adoption are: 1. In the case of adoption by a man, he acquires the *patria potestas* over the adopted son and the children of the adopted son, so far as they are in his power. 2. The adopted son acquires all the rights of a natural-born son, and among them the capacity to inherit. He also takes the family name of the adoptive father, which, however, in Germany, he only adds to his old family name. In the case of adoption by a man, he also becomes the Agnate of all the Agnati of the adoptive father, and all his previous relationships of Agnation cease. But no alteration is produced in the relationship of Cognation. Adoption, however, in respect of nobility and the succession to fief and family property, has no effect; a rule which had no other foundation than the wish of the nobility to keep themselves free from the influence of the Roman law in their family relations. 3. The adoption is permanent, yet the adoptive father can by emancipation, and the adopted son at a later period, dissolve the relationship on the same conditions under which the patria potestas can be dissolved on other occasions. But in the case of Adrogation, when the adoptive father emancipates or disinherits the adopted son without good reason, he must surrender not only all the property which the adopted son has brought and in the mean time acquired, but he must also leave him the fourth part of his own property (quarta Divi Pii). When an ancestor gives his own natural-born children and other descendants in adoption, as a general rule the full effects of adoption (adoptio plena) only take place when the adoptive father is an ancestor; otherwise the adoption had only a minor effect (adoptio minus plena), namely, the capacity to inherit from the adoptive father in case of intestacy. (Article, by Welcker, in the *Staats-Lexicon* of Rotteck and Welcker.) This account is sufficient to give a general view of the form and effects of adoption in Germany: but the account is deficient in precision. The German law of adoption is founded on the Roman, as will be obvious by comparing the German with the Roman system. There are variations in the several German states. The Prussian law does away with all distinction between *adoption* and *adrogation*, and allows the adopted son who is of age to manage his own property. The Austrian law does the same. Both also agree in requiring the age of the adoptive father to be fifty at least. The Prussian law, with respect to the adopted son, merely requires him to be younger than the father; the Austrian code requires him to be eighteen years younger than the adoptive father. (Ersch and Gruber's *Encyclopädie*, art. "Adoption.")

The French law of adoption is contained in the eighth title of the first book of the *Code Civil*. The following are its principal provisions:—Adoption is only permitted to persons above the age of fifty, having neither children nor other legitimate descendants, and being at least fifteen

years older than the individual adopted. It can only be exercised in favour of one who has been an object of the adopter's constant care for at least six years during minority, or of one who has saved the life of the adopter in battle, from fire, or from drowning. In the latter case, the only restriction respecting the age of the parties is, that the adopter shall be older than the adopted, and shall have attained his majority, or his twenty-first year; and if married, that his wife is a consenting party. In every case the party adopted must be of the age of twenty-one. The form is for the two parties to present themselves before the justice of the peace (*juge de paix*) for the place where the adopter resides, and in his presence to pass an act of mutual consent; after which the transaction, before being accounted valid, must be approved of by the tribunal of *first instance* within whose jurisdiction the domicile of the adopter is. The adopted takes the name of the adopter in addition to his own; and no marriage can take place between the adopter and either the adopted or his descendants, or between two adopted children of the same individual, or between the adopted and any child who may be afterwards born to the adopter, or between the one party and the wife of the other. The adopted acquires no right of succession to the property of any relations of the adopter; but in regard to the property of the adopter himself, it is declared that he shall have precisely the same rights with a child born in wedlock, even although there should be other children born in wedlock after his adoption. It has been decided in the French courts that aliens cannot be adopted.

The law of the Franks allowed a man who had no children to adopt the children of others; the adoption was effected by a transfer of the adopter's property to the person adopted; with a reservation of the usufruct thereof to the adoptive father for his life. The adoption was a solemn act, which took place before the king or other competent authority. The old law of Aragon allowed a man to adopt a son, though he had sons of his own, and the adopted son was on the same footing as a son of a man's body with respect to right to the inheritance and liability for the debts of his deceased parent. This in fact is the Roman law. (Du Cange, *Gloss. ad Script. Med. et Infim. Latinitatis*, "Adoptio Filiorum.")

Adoption is still practised both among the Turks and among other Eastern nations. It is common for a rich Turk who has no children of his own, to adopt as his heir the child of persons even of the poorest class. The bargain is ratified by the parties going together before the Cadi, and getting their mutual consent recorded; after which the child cannot be disinherited by his adoptive father. D'Herbelot states that, according to the law of Mohammed, a person becomes the adopted son of another by undergoing the ceremony of passing through his shirt; whence the expression, to draw another through one's shirt, signifies to adopt him for a son. In India the same thing is said to be frequently done by the two parties merely exchanging girdles. In the Code of Gentoo Laws published by Mr. Halhed, the 9th section of the 21st chapter is entitled 'Of Adoption.' The law permits a child under five years of age to be given up for adoption by the father for a payment of gold or rice, if he have other sons, on the parties going before a magistrate and having a *jugg*, or sacrifice, performed. A woman, however, it is added, may not adopt a child without having her husband's consent; and there is even some doubt if she may with that. "He," concludes the law, "who has no son, or grandson, or grandson's son, or brother's son, shall" (may?) "adopt a son; and while he has one adopted son, he shall not adopt a second."

There is no Adoption in the English or Scotch systems of Law.

The practice of adoption, when properly regulated, appears to be a useful institution. The existence of families is necessary to the conservation of a state; and there seems to be no good reason why those who have no children of their own should not by adoption add to their own comfort while they confer a benefit on others. The practice, however, may be less applicable to some states of society than to others, and before such an institution is established anew in any country,

the whole of the reasons on which it was originally founded in the law of Athens and Rome should be well considered.

ADULT-SCHOOLS are establishments for instructing in reading and other branches of knowledge those persons who have not been educated in their youth. Thirty or forty years since, there were numerous schools for adult instruction in reading and writing; but at the present time, and for some years past, the efforts of the friends of education have been directed entirely to the education of the young; and the necessity of schools for adults is probably not so great now as at the period when they were first established. There are a few schools for adults in the colliery districts in the north of England. When the Statistical Society instituted an inquiry into the state of education in Westminster, there was only one adult-school. But there are adult-schools in other parts of London, both for young men and young women, in which reading, writing, and arithmetic are taught. Mechanics' Institutes may be considered as adult-schools for instruction in various branches of knowledge.

The number of adults who are incapable of writing is still very large. In the three years ending 30th of June, 1841, the proportion for England and Wales of persons who signed their marriage register with their marks was 33 per cent. of the men, and 49 per cent. of the women: in Hertfordshire, Bedfordshire, and Monmouthshire, the proportion for the men exceeded 50 per cent., and in several counties it exceeded 60 for the women; and for North Wales it was 70 per cent. This test shows the state of education ten or twenty years ago; and for the last of the three years there was a slight increase of those who wrote their names.

The first school avowedly established for the purpose of instructing adults was formed in 1811, through the exertions of the Rev. T. Charles, a clergyman in Merionethshire. Some grown-up persons had previously attended his parish Sunday-school, but they showed a disinclination to learn with children, and this circumstance led to the adoption of more extended views for their benefit. Considerable success, both in the number and progress of the pupils, and their improved conduct and character, caused the establishment of other adult-schools throughout Wales.

About the same time, and without any concert or connection with the schools in Wales, a school was established at Bristol, through the instrumentality of W. Smith. This person, "who collected the learners, engaged the teachers, and opened the two first schools in England for instructing adults exclusively, in borrowed rooms, and with borrowed books,"* was the door-keeper to a dissenting chapel. He devoted three out of eighteen shillings, his weekly earnings, to defray the expense of giving to his brethren the means of studying the Scriptures, and of obtaining knowledge from other sources. A short time after these first efforts were made, a Society was formed for the furtherance of his benevolent views. In the first Report of this Society, dated April, 1813, it was stated that 222 men and 231 woman were already receiving education. Adult-schools were soon afterwards established in different parts of the kingdom, at Uxbridge, Norwich, Ipswich, Sheffield, Salisbury, Plymouth, and other places. Many instances occurred of persons acquiring the art of reading in old age, who gladly availed themselves, in the last few months of their existence, of the means afforded them of reading for themselves the hopes and promises held out by the Scriptures.

The following are the particulars respecting an experiment in adult education tried with success by Dr. Johnstone, at Edgbaston Hall, near Birmingham. This school was established about 1815; and the only expense incurred by the individual with whom the plan originated, was that of providing a room once a week, with fire and candle. It was soon attended by forty members—more than half the labouring population of the parish—of all ages from eighteen to seventy. The teaching was confined to reading and writing; and the men taught each other. The school assembled once a week, on Sunday evening, for two hours; but the men often studied their lessons at home

* Pole's History and Origin of Adult-Schools.

on the week-days. A man who was quite ignorant of reading generally acquired the art of reading with pleasure to himself in the course of six months. The men were generally fonder of writing than of reading. In many instances the members of the school were enabled to turn their acquirements, small as they were, to very good account.

ADULTERATION (from the Latin *Adulteratio*) is the use of ingredients in the production of any article, which are cheaper and not so good, or which are not considered so desirable by the consumer as other or genuine ingredients for which they are substituted. The sense of the Latin word is the same. (Pliny, *Hist. Nat.* xxi. 6.) The law does not generally consider adulteration as an offence, but relies apparently on an evil of this nature being corrected by the discrimination and good sense of the public. In Paris, malpractices connected with the adulteration of food are investigated by the Conseil de Salubrité, acting under the authority of the prefect of police. In this country, where the interests of the revenue are concerned, strict regulations have been resorted to in order to prevent adulteration. It is not, however, heavy customs or excise-duties alone which encourage adulteration, for the difference in price between the genuine and the spurious ingredient, when both are free from taxation, presents equal inducement to the practice. The following is an abstract of the law respecting the adulteration of some of the principal articles of revenue:—

Tobacco-manufacturers are liable to a penalty of 200*l.* for having in their possession sugar, treacle, molasses, honey, commings or roots of malt, ground or unground roasted grain, ground or unground chicory, lime, umbre, ochre, or other earths, sea-weed, ground or powdered wood, moss or weeds, or any leaves, or any herbs or plants (not being tobacco leaves or plants), respectively, or any substance or material, syrup, liquid, or preparation, matter, or thing, to be used or capable of being used as a substitute for, or to increase the weight of tobacco or snuff (5 & 6 Vict. c. 93, § 8). Any person engaged in any way in the preparation of articles to imitate or resemble tobacco or snuff, or who shall sell or deliver such articles to any tobacco-manufacturer, is also liable to a penalty of 200*l.* (§ 8). The penalty for actually adulterating tobacco or snuff is 300*l.* (§ 1); and for having such tobacco or snuff in possession, 200*l.* (§ 3). The Excise-survey on tobacco-manufacturers, abolished by 3 & 4 Vict. c. 18, has been re-established in consequence of the extraordinary extent to which adulteration was carried.

The ingredients used in the adulteration of beer are enumerated in the following list of articles which brewers or dealers and retailers in ale and beer are prohibited from having in their possession under a penalty of 200*l.* (56 Geo. III. c. 58, § 2). These articles are—molasses, honey, liquorice, vitriol, quassia, coculus Indicus, grains of Paradise, Guinea pepper, and opium; and preparations from these articles are also prohibited. They are used either as substitutes for hops, or to give a colour to the liquor in imitation of that which it would receive from the use of genuine ingredients. By § 3 of the same act a penalty of 500*l.* is imposed upon any chemist, druggist, or other person, who shall sell the articles mentioned in § 2 to any brewer or dealer in beer. The penalties against dealers in beer in the above act are extended to beer-retailers under 1 Wm. IV. c. 64, and 4 & 5 Wm. IV. c. 85, which acts also contain special provisions against adulteration applicable to this particular class of dealers. [ALEHOUSES.]

Tea, another important article of revenue, is protected from adulteration by several statutes. The act 11 Geo. I. c. 30, § 5, renders a tea-dealer liable to a penalty of 100*l.*, who shall counterfeit, adulterate, alter, fabricate, or manufacture any tea, or shall mix with tea any leaves other than leaves of tea (§ 5). Under 4 Geo. IV. c. 14, tea-dealers who dye, fabricate, or manufacture any sloe-leaves, liquorice-leaves, or the leaves of tea that have been used, or any other leaves in imitation of tea; or shall use terra japonica, sugar, molasses, clay, logwood, or other ingredients, to colour or dye such leaves; or shall sell or have in their possession such adulterated tea, are liable to

a penalty of 10*l.* for every pound of such adulterated tea found in their possession (§ 11). The 17 Geo. III. c. 29, also prohibits adulteration of tea (§ 1).

The adulteration of coffee and cocoa is punished with heavy penalties under 43 Geo. III. c. 129. Any person who manufactures, or has in his possession, or who shall sell, burnt, scorched, or roasted peas, beans, grains, or other grain or vegetable substance prepared as substitutes for coffee or cocoa, is liable to a penalty of 100*l.* (§ 5). The object of § 9 of 11 Geo. IV. c. 30, is similar. Chicory has been very extensively used in the adulteration of coffee in this country. This root, which possesses a bitter and aromatic flavour, came into use on the Continent in consequence of Bonaparte's decrees excluding colonial produce. Coffee with which a fourth or a fifth part of chicory has been mixed, is by some persons preferred as a beverage to coffee alone; but in England it is used to adulterate coffee in the proportion of one-half. The Excise has for some time permitted the mixture of chicory with coffee. In 1832 a duty was laid on chicory, and this duty, which has been increased once before, the chancellor of the exchequer is again about to raise. (*Budget*, April, 1844.) But chicory itself has been subject to adulteration, and the proposed increase of duty will be likely still further to extend the practice. Besides the quantity imported, chicory is also grown in England, and it will be necessary to place the cultivation under some restriction, or perhaps, as in the case of tobacco, to prohibit the growth of it altogether.

The manufacturer, possessor, or seller of adulterated pepper is liable to a penalty of 100*l.* (59 Geo. III. c. 53, § 22). The act 9 Geo. IV. c. 44, § 4, extends this provision to Ireland.

In the important article of bread, there are prohibitions against adulteration, though they are probably of very little practical importance. The act 6 & 7 Wm. IV. c. 37, which repealed the several acts then in force relating to bread sold beyond the city and liberties of London, and ten miles of the Royal Exchange, was also intended to prevent the adulteration of meal, flour, and bread beyond these limits. No other ingredient is to be used in making bread for sale except flour or meal of wheat, barley, rye, oats, buckwheat, Indian corn, peas, beans, rice or potatoes, mixed with common salt, pure water, eggs, milk, barm, leaven, potato or other yeast, in such proportions as the bakers think fit (§ 2). Adulterating bread, by mixing other ingredients than those mentioned above, is punishable by a fine of not less than 5*l.* nor above 10*l.*, or imprisonment for a period not exceeding six months; and the names of the offenders are to be published in a local newspaper (§ 8). Adulterating corn, meal, or flour, or selling flour of one sort of corn as flour of another sort, subjects the offender to a penalty not exceeding 20*l.* and not less than 5*l.* (§ 9). The premises of bakers may be searched, and if ingredients for adulterating meal or flour be found deposited, the penalty for the first offence is 10*l.* and not less than 40*s.*; for the second offence 5*l.*, and for every subsequent offence 10*l.*; and the names of offenders are to be published in the newspapers (§ 12). There are penalties for obstructing search (§ 13). Any miller, mealman, or baker acting as a justice under this statute incurs a penalty of 100*l.* (§ 15).

The above act did not apply to Ireland, where the baking trade was regulated by an act (2 Wm. IV. c. 31), the first clause of which, relating to the ingredients to be used, was similar to the English act just quoted. In 1838 another act was passed (1 Vict. c. 28), which repealed all former acts relating to the sale of bread in Ireland. The preamble recited that the act 6 & 7 Wm. IV. c. 37, had been found beneficial in Great Britain. The clauses respecting adulteration are similar to the English act.

The several acts for regulating the making of bread within ten miles of the Royal Exchange (which district is excluded from the operation of 6 & 7 Wm. IV.) were consolidated by the act 3 Geo. IV. c. 106. Under this act any baker who uses alum, or any other unwholesome ingredient, is liable to the penalties mentioned in § 12 of 6 & 7 Wm. IV. c. 37. Any ingredient or mixture found

within the house, mill, stall, shop, &c. of any miller, mealman, or baker, and which shall appear to have been placed there for the purpose of adulteration, renders him liable to similar penalties.

Other articles besides those which have been mentioned are adulterated to a great extent; but perhaps the remedy for the evil is not unwisely left to the people themselves, who probably are less likely to be imposed upon when depending on the exercise of their own discrimination, than if a commission of public functionaries were appointed, whose duty should consist in investigating as a branch of medical jurisprudence whatever related to the subject of adulteration. The interference of the government in this country with the practice of adulteration, except in the case of bread and drugs [APOTHECARIES' COMPANY], has evidently had no other object than the improvement of the revenue.

Adulteration and the deceitful making up of commodities appear to have frequently attracted the attention of the legislature in the sixteenth century, and several acts were passed for restraining offences of this nature. The act 23 Eliz. c. 8, prohibits under penalties the practice of mixing bees'-wax with rosin, tallow, turpentine, or other spurious ingredient. The following acts have reference chiefly to frauds in the making up of various manufactured products:— 3 Hen. VIII. c. 6; 23 Hen. VIII. c. 17; 1 Eliz. c. 12; 3 & 4 Edw. VI. c. 2; 5 & 6 Edw. VI. c. 6; 5 & 6 Edw. VI. c. 23.

ADULTERY (from the Latin *adulterium*) according to English law is the sexual connection of a man, whether married or single, with another man's wife; or of a married man with an unmarried woman. If both the adulterer and the adulteress are married, it is sometimes called double adultery; if one only is married, it is called single adultery.

Adultery was punished by the Jewish law with death; but the kind of adultery which by the Mosaic law constituted a capital crime was not every violation of chastity of which a married person, whether husband or wife, might be guilty; but only the sexual connection of a wife with any other man than her husband. This distinction was analogous to the whole system of the Jewish marriage-law; by which the husband and wife had not an equal right to restrain each other from infidelity; for the husband might marry other wives, or take concubines or slaves to his bed, without giving his first wife a legal right to complain of any infringement of her matrimonial rights.

By the Athenian law, the husband might kill the adulterer, if he detected him in the act of dishonouring him. (Lysias, *Oration on the Death of Eratosthenes.*) The husband at Athens might also prosecute the adulterer by law; or he might, if he pleased, receive from him a sum of money by way of compensation, without instituting any legal process. It appears that it was not adultery at Athens for a married man to have sexual intercourse with an unmarried woman, or with any woman who prostituted herself, or was in the habit of selling anything in the public market.

By the Romans adultery was defined to be "sexual intercourse with another man's wife." It was adultery whether the male was married or not; but the sexual connection of any man with a woman who was not married, was not adultery. It seems that the old Roman law allowed the husband and kinsmen (the husband's kinsmen) to sit in judgment on the adulterous wife. (Dionysius Halicarn. *Antiq. Rom.* ii. 25; Suetonius, *Tiberius*, c. 35.) The Julia Lex on adultery was passed in the time of Augustus (perhaps about B.C. 17). It repealed some old rules of law on the same subject, with which we are not acquainted, and introduced new rules. The Julian law allowed the father, whether the natural or adoptive father, to kill the adulterer and adulteress in certain cases which were laid down by the law; the husband also could in certain cases kill the adulterer when he caught him in the act, but not the wife. If the husband kept his wife after he had discovered an act of adultery committed by her, he was guilty of the offence called Lenocinium. Sixty days were allowed for the husband or the father, in whose power the adulteress was, for commencing legal proceedings. It appears

from the terms of the law that the sixty days were to be reckoned from the day of divorce, for the husband was bound to divorce his wife as soon as the fact of the adultery was known to him. After the sixty days were expired, any other person might accuse the adulteress. A wife convicted of adultery lost half of her dos, and the third part of any other property that she had, and was banished (relegata) to some miserable island. The adulterer lost half of his property, and was also banished. The law did not inflict the punishment of death; those cases in which death was inflicted, under the early emperors, were extraordinary, and were either irregular exercises of power, or the charge of treason (majestas) was either directly or by implication added to that of adultery. A constitution of Constantine (*Cod.* ix. tit. 30) made adultery a capital offence in the male; but perhaps the genuineness of the constitution may be doubted. Justinian (*Novel.* 134, c. 10) confirmed the legislation of Constantine, whatever it was, and added confinement in a convent as the punishment of the adulteress, after she had been whipped. The husband might, if he liked, take her out of the convent within two years, and cohabit with her again; but if he did not, or if he died in the two years, her head was shaved and she was compelled to spend the rest of her life in the convent. The same Novel also imposed pecuniary penalties both on the adulterer and adulteress. The provisions of the Julian law are collected from various sources. (*Dig.* 48, tit. 5; Paulus, *Sentent. Recept.* ii. tit. 26.)

By the canon law, which is now more or less part of the law of most Christian countries, adultery is defined to be the violation of conjugal fidelity; and, consequently, the incontinency of the wife and husband stand upon the same foundation. Hence arises the distinction above alluded to between a single and double adultery.

Double and single adultery are punishable with various degrees of severity in most of the countries of modern Europe; but it is believed that in none of them, at the present day, is either of these offences capital.

There are some traces of the punishment of adultery as a crime in very early periods of the history of English law. Lord Coke says, that in ancient times it was within the jurisdiction of the sheriff's tourns and court-leet, and was punished by fine and imprisonment (3 *Inst.* 306): but at the present day, adultery is not the subject of a criminal prosecution in the temporal courts, and the cognizance of the offence is confined to the Ecclesiastical Courts, according to the rules of the canon law. Instances of criminal prosecutions in the spiritual courts for adultery are extremely rare; and if instituted to the conviction of the parties, the infliction of a slight fine or penance "for the benefit of the offender's soul" (*in salutem animæ*), as it was termed, would be the only result. In the year 1604 (2 James I.) a bill was brought into Parliament "for tne better repressing the detestable crime of adultery." This bill went through a committee in the House of Lords; but, upon being reported, it was suggested to the House that the object contemplated by the measure was the private interest of some individuals, and not the public good; whereupon the bill was dropped. (*Parl. History*, vol. v. p. 88.) During the Commonwealth, adultery, in either sex, was made a capital felony (Scobel's *Acts*, part ii. p. 121), but at the Restoration this law was discontinued.

Adultery, however, comes under the cognizance of the temporal courts in England as an injury to the husband. Thus a man may maintain an action against the seducer of his wife, in which he may recover damages as a compensation for the loss of her services and affections in consequence of the adultery. For the particular rules and proceedings in this action, see Selwyn's *Nisi Prius*, title "Adultery." But the legal nature of the union of husband and wife does not give the wife the same rights as the husband, and she has no remedy by the common or statute law in case of the husband's sexual intercourse with another woman: she has no redress for his misconduct in the ordinary courts. Her only remedy is in the Ecclesiastical Courts, where she can obtain a separation from her husband, but not a complete divorce. The hus-

band, after obtaining a verdict against the adulterer in a court of law, and a sentence of separation by the Ecclesiastical Court, may obtain a divorce from his wife by Act of Parliament; and in no other way. [DIVORCE.]

It is not easy to define the law of Scotland relative to adultery. Heavy penalties were levelled against it by various acts of the sixteenth century, and at last by the Act 1563, c. 74, it was ordained that "all notour or manifest committers of adulterie, in onie time to cum, sall be punished with all the rigour unto the death, as weil the woman as the man, doer and committer of the samin:" and certain criterions were established for distinguishing the notorious and habitual practice of the crime which was thus punishable with death, from those isolated acts which were visited by the common law with a less punishment. The latest instance of sentence of death awarded for adultery is, perhaps, the case of Margaret Thomson, 28th May, 1677. All the statutes on the subject have, according to the peculiar practice of Scotland, expired by long desuetude. On the other hand, however, if the public prosecutor should think fit to prosecute for adultery, the High Court of Justiciary has authority to count it within the class of offences punishable at discretion. Such prosecutions are however unknown. In the seventeenth and the commencement of the eighteenth century, the church courts made themselves very active in requiring the civil magistrate to adjudicate in this offence; but this means of punishment was abolished by the 10th Anne, c. 7, § 10, which prohibited civil magistrates from giving effect to ecclesiastical censures. Of late years the doctrine has been admitted by Scottish lawyers, that the seduction of a wife is a good ground for an action of damages; but such prosecutions are wholly unknown in practice. Adultery is a good ground for an action of divorce. [DIVORCE.] (Hume *On Crimes*, i. 452-458; Stair's *Institute*, b. 1, tit. 4, § 7; Erskine's *Institute*, b. 1, tit. 6, § 43.)

The French law (*Code Pénal*, 324) makes it excusable homicide if the husband kills the wife and the adulterer in the act of adultery in his own house. The punishment of a woman convicted of adultery is imprisonment for a period of not less than three months, and not exceeding two years; but the prosecution can only be instituted at the suit of the husband; and the sentence may be abated on his consenting to take back the wife (§ 337, 337). The paramour of a wife convicted of adultery is liable to imprisonment for not less than three months, or for a period not exceeding two years; and to a penalty of not less than 100 francs, or not exceeding 2000 francs (§ 338). A husband convicted, on complaint of the wife, of keeping a concubine in his own house, is liable to penalties of not less than 100 or not more than 2000 francs; and under these circumstances he cannot institute a suit against his wife for adultery (§ 339).

In the State of New York, the Court of Chancery is empowered to pronounce a divorce à vinculo matrimonii in the case of adultery, and in no other case, upon the complaint either of the husband or the wife. The process is by bill filed by the complaining party. [DIVORCE.] If a divorce is pronounced, the defendant is disabled from marrying during the lifetime of the other party. Adultery appears to be a ground of divorce in all the American States, so far as can be collected from the statement in Kent (*Commentaries*, vol. ii.). A case is mentioned by Kent as decided in New Jersey, in which it was adjudged that a married man was not guilty of adultery in having carnal connection with an unmarried woman. By a statute of North Carolina, adultery is an indictable offence. In Alabama both adultery and fornication are indictable offences in persons living together in adultery or fornication. The law of Massachusetts also punishes adultery and fornication as indictable offences.

Du Cange (*Gloss. Med. et Infim. Latin.*) contains much curious matter on the punishment of adultery among various nations of the middle ages.

The subject of adultery and its penalties is one of great interest to society, but one of great difficulty. The usages of nations have varied as to the punishment, but inasmuch as adultery is the corruption of

marriage, which is the foundation of society, adultery has been viewed as a great offence by all nations. The consideration of the penalties which ought to be imposed on the offenders is inseparable from the question of divorce and the provision for the children of the marriage, if any.

ADVENTURE, BILL OF, is a writing signed by a merchant, stating that the property of goods shipped in his name belongs to another, the adventure or chance of which the person so named is to stand, with a covenant from the merchant to account to him for the produce. In commerce, an adventure is defined a speculation in goods sent abroad under the care of a supercargo, to dispose of to the best advantage for the benefit of his employers.

ADVE'RTISEMENT (from the French *avertissement*, which properly signifies a giving notice, or the announcement, of some fact or facts). In the English, Scotch, and Irish newspapers, and other periodical works, there are annually published nearly two millions of announcements, which, whatever be their peculiar character, are known by the general name Advertisement. The duty on a single advertisement was formerly 3*s.* 6*d.* in Great Britain, and 2*s.* 6*d.* in Ireland; but by 3 & 4 Wm. IV. c. 23, it was reduced to 1*s.* 6*d.* in Great Britain, and 1*s.* in Ireland. In the year previous to this reduction the total number of newspaper advertisements published in the United Kingdom was 921,943, viz. 787,649 in England, 108,914 in Scotland, and 125,380 in Ireland. The duty amounted to 172,570*l.*, and had been stationary for several years. In 1841 the number of advertisements had increased to 1,778,957, namely, 1,386,625 for England and Wales (653,615 in London, and 733,010 in provincial newspapers); 188,189 in Scotland; and 204,143 in Ireland. The total duty amounted to 128,318*l.*; and it has progressively increased from the period when the reduction took place, so that there is little doubt of its producing, in time, as large a revenue as it did at the higher rate. The circulation of newspapers has nearly doubled since the reduction of the stamp-duty upon them; and as the number of separate newspapers has not much increased, an advertisement has the chance of being seen by a greater number of readers. The size of newspapers has been doubled in many instances, to allow of the insertion of a greater number of advertisements. The 'Times' newspaper, which has always had the largest number of advertisements, contained 202,972 advertisements in 1842, or nearly one-third of all the advertisements published in London: as many as 1200 advertisements have sometimes appeared in one day's publication, and the average number each day exceeds 700. Since 1836 this newspaper has issued a double sheet; and within the last two years, during the session of Parliament, even an additional sheet has been issued twice or three times a week, in consequence of the demand for increased space for advertisements. Generally speaking, advertisements supply the fund out of which newspapers are supported, as the price at which the newspaper is sold is insufficient to pay the cost of the stamp, the paper, the printing, and the cost of management. In the greater number of advertisements, the former duty of 3*s.* 6*d.* constituted a tax of 100 per cent. The lowest price of an advertisement in a London daily newspaper is now 5*s.*, which includes the duty: such advertisement must not exceed five lines. The usual practice is to charge 6*d.* per line for each line above four; but when the number of lines exceeds about twenty lines, the rate of charge is increased, the longest advertisements being charged at the highest rate. The rate per column for a single advertisement varies from 6*l.* to 12*l.* according to the circulation of the paper in which it is printed. Advertisements from servants wanting places are charged only 4*s.* each; and one or two papers in the large provincial towns have adopted a plan of charging only 2*s.* 6*d.* for short advertisements of a couple of lines, which are sufficient to embrace notices of a great variety of public wants, of a nature similar to those made known by advertisement in the papers of the United States. But here the duty on these short advertisements constitutes a tax of

66 per cent. If the duty were abolished, the minimum price of advertisements would probably be 1s. in all but a few papers. The habit of advertising has, however, been practically discouraged by the former high duty. In our complicated state of society every facility should be given to the only effectual means of informing the public of new improvements, inventions, and other things calculated to promote the public advantage. The yearly number of advertisements in the United States, where no duty on them exists, is said to exceed 10,000,000.

Advertisements relating to the administration of the poor law, such as contracts for supplies, elections of officers, &c., are exempt from duty, as are also those relating to the proceedings under bankruptcies and insolvencies.

A printed copy of every pamphlet or paper (not a newspaper) containing advertisements must be brought to the Stamp-Office to be entered, and the duty thereon to be paid, under a penalty of 20*l.* (§ 21, 6 & 7 Wm. IV. c. 76).

The first English advertisement which can be found, is in the 'Impartial Intelligencer' for 1649, and relates to stolen horses. In the few papers published from the time of the Restoration to the imposition of the Stamp Duty in 1712, the price of a short advertisement appears seldom to have exceeded a shilling, and to have been sometimes as low as sixpence. (Nichols's *Literary Anecdotes*, vol. iv.)

ADVICE, in its legal signification, has reference only to bills of exchange. The propriety of inserting the words "as per advice," depends on the question whether or not the person on whom the bill is drawn is to expect further directions from the drawer. Bills are sometimes made payable "as per advice;" at other times "without further advice;" and generally without any of these words. In the former case the drawer may not, in the latter he may, pay before he has received advice.

Advice, in commercial language, means information given by one merchant or banker to another by letter, in which the party to whom it is addressed is informed of the bills or drafts which have been drawn upon him, with the particulars of date, &c., to whom payable, &c., and where.

ADVOCATE, from the Latin *advocatus*. The origin of advocates in Rome was derived from an early institution, by which every head of a patrician house had a number of dependants, who looked up to him as a protector, and in return owed him certain obligations. This was the relation of patron and client (*patronus, cliens*). As it was one of the principal and most ordinary duties of the patron to explain the law to his client, and to assist him in his suits, the relation was gradually contracted to this extent.

In early periods of the Roman republic the profession of an advocate was held in high estimation. It was then the practice of advocates to plead gratuitously; and those who aspired to honours and offices in the state took this course to gain popularity and distinction. As the ancient institutions were gradually modified, the services of Roman advocates were secured by pay. At first it appears that presents of various kinds were given as voluntary acknowledgments of the gratitude of clients for services rendered. These payments, however, gradually assumed the character of debts, and at length became a kind of stipend periodically payable by clients to those persons who devoted themselves to pleading. At length the Tribune M. Cincius, about B.C. 204, procured a law to be passed, called from him Lex Cincia, prohibiting advocates from taking money or gifts for pleading the causes of their clients. In the time of Augustus, this intended prohibition seems to have become inefficient and obsolete; and a Senatus consultum was then passed by which the Cincian law was revived, and advocates were made liable to a penalty of four times the amount of any fee which they received. Notwithstanding these restrictions, the constant tendency was to recur to a pecuniary remuneration; for in the time of the Emperor Claudius we find a law restraining advocates from taking exorbitant fees, and fixing as a maximum the sum of 10,000 sesterces for each cause pleaded, which would be equivalent to about 80*l.* sterling. (Tacit. *Ann.* xi. 5, 7.)

Though the word Advocate is the term now generally used to express a person conversant with the law who manages a plaintiff's or defendant's case in court, this is not exactly the meaning of the Roman work advocatus. The word Advocatus, as the etymology of the word implies (*advocare*, to call to one's aid), was any person who gave another his aid in any business, as a witness for instance, or otherwise. It was also used in a more restricted sense to signify a person who gave his advice or aid in the management of a cause; but the Advocatus of the republican period was not the modern Advocate. He who made the speech for plaintiff or defendant was termed Orator or Patronus. Ulpian, who wrote in the second century A.D., defines Advocatus to be one who assisted another in the conduct of a suit (*Dig.* 50, tit. 13); under the Empire indeed we find Advocatus sometimes used as synonymous with Orator. As the word Advocatus must not be confounded with Orator, so neither must Advocatus nor Orator be confounded with Jurisconsultus, whose business it was to know the law and to give opinions on cases. The Emperor Hadrian established an Advocatus Fisci, whose functions were to look after the interests of the Fiscus, or the Imperial revenue.

In still later periods these restrictions upon the pecuniary remuneration of advocates, which must always have been liable to evasion, disappeared in practice; and the payment of persons for conducting causes in courts of justice resembled in substance the payment of any other services. In form, however, the fee was merely an honorary consideration (quiddam honorarium), and was generally prenumerated, or paid into the hands of the advocate before the cause was pleaded. It was a rule that, if once paid, the fee could never be recovered, even though the advocate was prevented by death or accident from pleading the cause: and when an advocate was retained by his client at an annual salary (which was lawful and usual), the whole yearly payment was due from the moment of the retainer, though the advocate died before the expiration of the year. (Heineccius, *Elementa Juris Civilis*, p. 132.) Traces of this practice exist in all countries into which the Roman law has been introduced; and are also clearly discernible in the rules and forms respecting fees to counsel at the present day in England.

In countries where the Roman law prevails in any degree, the pleaders in courts of justice are still called advocates, but their character and duties vary under different governments. [ADVOCATES, FACULTY OF; and AVOCAT.]

Advocates in English courts are usually termed COUNSEL.

The Lord Advocate, or King's Advocate, is the principal crown lawyer in Scotland. [ADVOCATE, LORD.]

In the middle ages various functionaries bore the title of Advocati.

Advocati Ecclesiarum were persons who were appointed to defend the rights and the property of churches by legal proceedings. They were established under the later Empire, and subsequently it was determined, in a council held by Eugenius II., that bishops, abbots, and churches should have Advocati, or, as they were otherwise called, Defensores, from their duty of defending the rights of the church. These Advocati were laymen, and took the place of the earlier officers of the same kind, called Œconomi, who were those ecclesiastics to whom was intrusted the care of church property. In course of time the office of Advocatus Ecclesiarum was conferred on powerful nobles, whose protection the church wished to secure. Charlemagne was chosen Advocatus by the Romans, to defend the Church of St. Peter against the Lombard kings of Italy. Pepin is styled, in a document of A.D. 761, King of the Franks and Roman Defender (Defensor Romanus). The title of Advocate of St. Peter was given to the Emperor Henry II.; and Frederick I. was called Defender of the Holy Roman Church.

The business of these Advocati was originally to defend the rights of a church or religious body in the courts, but they subsequently became judges, and held courts for the vassals of those religious houses whose Advocati they were. They were paid by a third part of the fines; the other two-thirds went to the church for whom they acted. The Advocatus and

his train, while making their judicial circuit, were entitled to various allowances of food. The advocati had great opportunities of extending their privileges, which they did not neglect, and the records of the middle ages abound in complaints of their rapacity and oppression, which were stopped by the princes' determining the amount to which they were entitled for their services.

But circumstances led to still further changes. The nature of the feudal system rendered it necessary for the abbots and heads of churches to hire the military services of others, as the ecclesiastics could not bear arms themselves, and, in order to gain the services of warlike chiefs, they granted to them lands to hold as fiefs of the church. This practice of enfeoffing advocates with church property was of high antiquity, at least as early as A.D. 652. The advocates did homage for the church lands which they held. The subject of the advocates of churches is treated by Du Cange with great fullness and clearness.

One sense of Advocatus remains to be explained, which has reference to the term Advowson. Advocatus is the Patronus who has the right of presenting a person to the ordinary for a vacant benefice. The Patronus is the founder of a church or other ecclesiastical establishment; he is also called Advocatus. The Patronus endowed the church with lands, built it, and gave the ground.

ADVOCATE, LORD, is the name given to the principal public prosecutor in Scotland. He is assisted by a Solicitor-General and some junior counsel, generally four in number, who are termed Advocates depute. He is understood to have the power of appearing as prosecutor in any court in Scotland, where any person can be tried for an offence, or to appear in any action where the Crown is interested; but it is not usual for him to act in the inferior courts, which have their respective public prosecutors, called procurators fiscal, acting under his instructions. The procurator fiscal generally makes the preliminary inquiries as to crimes committed in his district; and transmitting the papers to the Lord Advocate, that officer, or one of his assistants, either directs the case to be prosecuted at his own instance before the superior court, or leaves it to the conduct of the procurator fiscal in the inferior court. The origin of this office is not distinctly known. The prosecution of all offences at the instance of the crown, appears to have gradually arisen out of two separate sources: the one, the prosecution of state offences; the other, an inquiry, for behoof of the crown, into the extent of the feudal forfeitures arising from offences. A public prosecutor is alluded to in statute law so early as the year 1436; and by the Act 1587, c. 77, it is enacted "That the thesaurer and advocate persew slaughters and utheris crimes, althoucht the parties be silent, or wald utherwayes privily agree." It is now so thoroughly fixed a principle that the Lord Advocate is the prosecutor for the public interest of all offenders, that when a private party prosecutes, it is the practice that he shall obtain the concurrence of the Lord Advocate. It has been maintained that this concurrence is not necessary, and, on the other hand, that when required, the Lord Advocate can be compelled to give it: but these questions have not been authoritatively settled, as in practice the consent is never refused. The Lord Advocate sat in the Scottish Parliament in virtue of his office, as one of the officers of state. He is usually in the commission of the peace: and it is perhaps owing to the circumstance of his thus being a magistrate, that it is said he can issue warrants for the apprehension of accused persons. This is usually called one of the functions of his office, but its existence may be questioned; and the Lord Advocate, like any other party to a cause, never acts as a magistrate in his own person, but obtains such warrants as he may require from the Court of Justiciary. He and his assistants are always members of the ministerial party, and, much to the detriment of the public police business of the country, it is their practice all to resign when there is a change of ministers. When the Duke of Newcastle was in power, the practice of appointing a Secretary of State for Scotland being discontinued, that minister intrusted a great portion of the political business of the

country to the Lord Advocate; and that practice having been continued, the Lord Advocate is virtually secretary of state for Scotland. His duties in this capacity are multifarious, and the extent of his power is not very clearly defined. It is a very general opinion that the administration of criminal justice is injured by this concentration of heterogeneous offices in one man, and that it would be an improvement to throw part of his duties on an under-secretary of state. In 1804, when an inquiry into the conduct of Mr. Hope, as Lord Advocate, was moved for and lost in the House of Commons, that gentleman said, "Cases do occur when nothing but responsibility can enable a Lord Advocate of Scotland firmly and honestly to perform his duty to the public. In the American war, a noble lord, who then filled the situation [Lord Melville], acted on one occasion on this principle, in a way that did him the highest honour. The instance to which I allude was the case of several vessels about to sail from Greenock and Port Patrick to New York and Boston. If these vessels had been permitted to sail, the consequence would have been that a number of British subjects would have been totally lost to this country. What then did the noble lord do? . . . . He incurred a grand responsibility: immediately sent orders to the custom-house officers of the ports from which the vessels were to sail, and had them all embargoed." And several similar instances of the exercise of undefined power were adduced on that occasion. By an old act, the person who gives false information of a crime to the Lord Advocate is responsible to the injured party, but the Lord Advocate himself is not responsible; and it is held that he is not bound to name his informant. He does not, in prosecuting for offences, require the intervention of a grand jury, except in prosecutions for high treason, which are conducted according to the English method.

ADVOCATES, FACULTY OF. The Faculty of Advocates in Edinburgh constitute the bar of Scotland. It consists of about 400 members. Only a small proportion, however, of these profess to be practising lawyers, and it has become a habit for country gentlemen to acquire the title of Advocate, in preference to taking a degree at the Scottish Universities. The Faculty has no charter, but the privileges of its members have been acknowledged in Acts of Parliament and other public documents. They may plead before any court in Scotland where the intervention of counsel is not prohibited by statute; in the House of Lords, and in parliamentary committees. Their claim to act as counsel is generally admitted in the colonial courts; and in those colonies where the civil law is predominant, such as the Cape of Good Hope and the Mauritius, it is usual for those colonists who wish to hold rank as barristers to become members of the Faculty of Advocates. The only credential which it is necessary for a candidate for admission to the Faculty to produce is evidence of his having passed his twentieth year. On making his application, he is remitted to the committee of examinators on the civil law, who examine him on Justinian's Institutes, and require him to translate *ad aperturam* a passage in the Pandects. After the lapse of a year he is examined in Scottish law. He then passes the ordeal of printing and defending Theses on a title of the Pandects after the method formerly followed in the Universities, and still preserved in some of them. The Faculty have a collection of these Theses, commencing with the year 1693. The impugnment is now a mere form. Being admitted by ballot by those members of Faculty who attend the impugnment, the candidate, on taking the oaths, receives an act of admission from the Court of Session. The expense of becoming a member of the Faculty, including stamp duty, subscription to the widows' fund, the cost of printing the Theses, and the subscription to the library, amounts to about 350*l.* The Faculty choose a dean or chairman by an annual vote. The Dean of Faculty and the two crown lawyers, the Lord Advocate and Solicitor-General, are the only persons who take precedence at the Scottish bar, independent of seniority. The Lord Advocate and the Solicitor-General are the only members of the Faculty who wear silk gowns and sit within the bar.

ADVOCATION in the Law of Scotland, is the name of a process by which an action may be carried from an inferior to a superior court before final judgment in the former. Advocations are regulated by the 1 & 2 Vict. c. 86.

ADVOWSON is the right of presenting a fit person to the bishop, to be by him instituted to a certain benefice within the diocese, which has become vacant. The person enjoying this right is called the *patron* (patronus, advocatus) of the church, and the right is termed, in law Latin, an advowson (*advocatio*), because the patron is bound to advocate or protect the rights of the church, and of the incumbent whom he has presented. [ADVOCATE.]

As this patronage may be the property of laymen, and is subject to alienation, transmission, and most of the changes incidental to other kinds of property, it would be liable to be misused by the intrusion of improper persons into the church, if the law had not provided a check upon abuse by giving to the bishop a power of rejecting the individual presented, for just cause. The ground of his rejection is, however, not purely discretionary, but is examinable at the instance either of the clergyman presented or of the patron, by process in the ecclesiastical and temporal courts.

According to the best authorities, the appointment of the religious instructors of the people within any diocese formerly belonged to the bishop: but when the lord of a manor, or other considerable landowner, was willing to erect a church, and to set apart a sufficient portion of land or tithe for a perpetual endowment, it was the practice for the founder and his heirs to have the right of nominating a person in holy orders to be the officiating minister, as often as a vacancy should occur, while the right of judging of the spiritual and canonical qualification of the nominee was reserved, as before, to the bishop. Thus the patron is properly the founder of a church or other ecclesiastical establishment: he who built the church, gave the ground for it, and endowed it with lands. (Du Cange, *Gloss.*, *Advocatus*, *Patronus*.)

This seems to be the most satisfactory account of the origin of *advowsons* and *benefices*, and it corresponds with many historical records still extant, of which examples may be seen in Selden's *History of Tithes*. It also explains some circumstances of frequent occurrence in the division of parishes, which might otherwise appear anomalous or unaccountable. Thus the existence of detached portions of parishes, and of extra-parochial precincts, and the variable extent and capricious boundaries of parishes in general, all indicate that they owe their origin rather to accidental and private dotation than to any regular legislative scheme for the ecclesiastical subdivision of the country. Hence, too, it is frequently observable that the boundaries of a parish either coincide with, or have a manifest relation to, manorial limits. The same connexion may, perhaps, have suggested itself to those who have had opportunities of noticing the numerous instances in different parts of England, in which the parochial place of worship is closely contiguous to the ancient mansion of its founder and patron, and within the immediate enclosure of his demesne.

As an illustration of the respect inculcated in early ages to the patron of a church, we find that the canons of the church permitted him alone to occupy a seat within the chancel or choir, at a time when that part of the building was partitioned off from the nave, and reserved for the exclusive use of the clergy. (Kennett's *Paroch. Antiq. Glossary*, tit. "Patronus.")

An advowson which has been immemorially annexed to a manor or to other land, is called an *advowson appendant*, and is transmissible by any conveyance which is sufficient to pass the property in the manor or land itself. It may, however, be detached from the manor, and is then termed an *advowson in gross*, after which it can never be re-annexed so as to become appendant again.

An advowson is in the nature of a temporal property and a spiritual trust. In the former view, it is a subject of lawful transfer by sale, by will, or otherwise, and is available to creditors in satisfaction of the debts of the patron. It may be aliened for ever, or for life, or for a

certain term of years; or the owner may grant one, two, or any number of successive rights of presentation on future vacancies, subject always to certain restrictions imposed by the law, for the prevention of corrupt and simoniacal transactions.

On the other hand, the spiritual trust which is attached to this species of property is guarded and enforced by very jealous provisions. The appointment of a duly qualified incumbent is secured, as far as the law can secure it, by requiring the sanction of the bishop to his admission; and although this sanction is, in fact, very rarely withheld, yet it cannot be doubted that the existence of such a check is essential to the well-being of the church. In order more effectually to guard against the danger of a corrupt presentation, the immediate right to present is absolutely inalienable, as soon as a vacancy has actually occurred; and on a similar principle, a purchase of it during the mortal sickness of the incumbent is equally prohibited.

When the proprietor of an advowson exercises his patronage, three persons are immediately concerned: the proprietor, the clergyman who is presented, and the bishop in whose diocese the living is situate; or (in the language of lawyers) the *patron*, the *clerk*, and the *ordinary*. The presentation is usually a writing addressed to the bishop, alleging that the party presenting is the patron of a church which has become vacant, and requesting the bishop to admit, institute, and induct a certain individual into that church, with all its rights and appurtenances. A period of time, limited to twenty-eight days, is then allowed to the bishop for examining the qualification and competency of the candidate, and at the expiration of that time he is admitted and instituted to the benefice by formal words of institution read to him by the bishop, from an instrument to which the episcopal seal is appended. A mandate is then issued to the archdeacon or other officer to *induct*, *i.e.* to put the new incumbent into the actual possession of the church and its appurtenant rights; and then, and not before, his title as legal *parson* becomes complete.

It sometimes happens that two of the three characters of patron, clerk, and bishop (or ordinary), are united in one person. Thus the bishop may himself be the patron; in which case presentation is superfluous, and institution alone is necessary. The bishop is then technically said to *collate* the clergyman to the benefice, and the advowson under these circumstances is said to be *collative*.

So the clerk may be the patron, in which case, though he cannot regularly present himself, yet he may pray to be admitted by the bishop; or he may transfer to another the right of presentation before the particular vacancy occurs, and then procure himself to be presented.

Another instance in which the patronage and the parsonage are often found united is in *appropriations*, where, by the concurrence of all parties interested, the advowson, together with the church, its revenues and appurtenances, have in former times been conveyed to some ecclesiastical body, who thus became both the patrons and perpetual incumbents of the living, and by whom the immediate duties of cure are devolved on a *vicar* or a stipendiary *curate*.

There are instances of advowsons the patrons of which have power to appoint an incumbent without any previous resort to the bishop for his aid or approbation. These are called *donative* advowsons, because the patron exercises a direct and unqualified privilege of *giving* his church to a clerk selected by himself. The only check upon the conduct of the incumbent in such cases is the power of the patron to visit, and even to deprive him, when the occasion demands it; and the right still residing in the bishop to proceed against him in the spiritual court for any ecclesiastical misdemeanour. It is the opinion of the most eminent lawyers that donatives had their origin in the king, who has authority to found any church or chapel exempt from the episcopal jurisdiction, and may also, by special licence, enable a subject to do the same.

Sometimes the *nomination* is distinct from the right to present: thus, the owner of an advowson may grant to another the right to nominate a clergyman, whom the grantor and his heirs

shall be thereupon bound to present. Here it is obvious that the person to whom the right of nomination is given is substantially the patron, and the person who presents is merely the instrument of his will. So, where an advowson is under mortgage, the mortgage-creditor is bound to present any person who shall be nominated by the mortgagor.

If, upon the vacancy of a living, no successor, or an insufficient one, shall be presented, it is put under *sequestration* by the bishop, whose care it then becomes to provide for the spiritual wants of the parish by a temporary appointment, and to secure the profits of the benefice, after deducting expenses, until another incumbent shall be duly inducted. After a vacancy of six months, occasioned by the default of the patron, the right to present *lapses* to the bishop himself. On a similar default by him, it devolves to the archbishop, and from him again to the king as paramount patron; the period of six calendar months is allowed to pass in each case before the right is forfeited to the superior. A donative advowson, however, is excepted from the general rule; for there the right never lapses by reason of a continued vacancy, but the patron is compellable to fill it up by the censures of the Ecclesiastical Court.

When the incumbent of a living is promoted to a bishopric, it is thereby vacated, and the king, in virtue of his prerogative, has a right to present to it in lieu of the proprietor of the advowson. This singular claim on the part of the crown appears to have grown up since the Reformation, and was the subject of complaint and discussion down to as late a period as the reign of William and Mary. It is difficult to reconcile it to any rational principle, although it has been urged by way of apology, that the patron has no ground to complain, because the king might, if he pleased, enable the bishop to retain the benefice, notwithstanding his promotion, by the grant of a *commendam:* so that the patron sustains no other injury than what may result from the substitution of one life for another. It is, however, certain that, by successive promotions, the crown may, in fact, deprive the patron of his right for an indefinite time, and an instance is known to have actually occurred wherein the patron of the parish of St. Andrew in London was prevented, by several such exertions of the royal prerogative, from presenting to his own living more than once in 100 years. (See the arguments in the case of the Vicarage of St. Martin's, reported by Sir B. Shower, vol. i. p. 468.) It was truly observed by the counsel in that case, that the safest course to be adopted by an unconscientious patron, with a view to retain in his own hands the future enjoyment of his right, would be to present a clergyman whose qualities are not likely to recommend him to higher preferment.

The following cases may be selected as best illustrating the peculiar nature of this sort of property.

If a man marries a female patron, and a vacancy happens, he may present in the name of himself and wife.

Joint tenants and tenants in common of an advowson must agree in presenting the same person; and the bishop is not bound to admit on the separate presentation of any one. Co-heiresses may also join in presenting a clergyman; and if they cannot agree in their choice, then they shall present in turn, and the eldest shall have the first turn.

When the patron dies during a vacancy, the right to present devolves to his executors, and not to his heir: but where the patron happens also to be the incumbent, his heir, and not his executor, is entitled to present.

Where the patron is a lunatic, the lord chancellor presents in his stead; and he usually exercises his right in favour of some member of the lunatic's family, where it can with propriety be done.

An infant of the tenderest age may present to a living in his patronage, and his hand may be guided in signing the requisite instrument. In such a case the guardian or other person who dictates the choice or directs the pen is the real patron; but the Court of Chancery would doubtless interfere to prevent any undue practice. (Burn's *Eccles. Law*, tit. *Advowson, Benefice, Donative;* Selden's *History of Tithes;* Gibson's *Codex*, vol. ii.; and BENEFICE, under which head

there is a table of the value of livings, and the distribution of ecclesiastical patronage.)

ADVOWSONS, VALUE OF.—The following plain rules for estimating the value of advowsons may be of use. The bargains which are usually made with respect to advowsons are, either for the advowson itself, *i.e.* the right of presentation for ever, or for the right of presenting the next incumbent, *i.e.* the next presentation. In both these cases there may be circumstances peculiar to the living itself, which fall under no general rule, but which must be considered and allowed for in valuing the advowson as a property. For example, a curate may be necessary; the parsonage-house may be in a state which will entail expenses on the next incumbent; and so on. Again, the property itself is of a nature more likely to be altered in value by the act of the legislature than the fee-simple of an estate. The following rules, therefore, give the *very highest value* of the advowson, and any purchaser should think twice before he gives as much as is found by them.

To find the value of the perpetual advowson of a living producing 1000*l.* a year, the present incumbent being forty-five years of age, and money making four per cent., we must first find how many years' purchase the incumbent's life is worth, and here we should recommend the use of the government or Carlisle tables, in preference to any other. Taking the latter, we find the annuity on a life of forty-five, at four per cent., to be worth fourteen and one-tenth years' purchase; but at four per cent. any sum to be continued annually for ever is worth twenty-five years' purchase. The difference is ten and nine-tenths years' purchase, or, for 1000*l.* a year, 10,900*l.*, which is the value of the advowson.

In finding the value of the next presentation only, other things remaining the same, the seller will presume that the buyer means to make the best of his bargain by putting in the youngest life that the laws will allow, that is, one aged twenty-four. The value of an annuity on such a life at four per cent., according to the Carlisle tables, is seventeen and eight-tenths years' purchase. And as we are giving the highest possible value of the advowson, omitting no circumstance which can increase it, we will suppose the next incumbent to come into a year's profits of the living immediately on his taking possession. The rule is this:—Take four per cent. of the value of the present incumbent's life, or $14{\cdot}1 \times {\cdot}04$, which gives ·564; subtract this from 1, which gives ·436; divide by 1 increased by the rate per cent., or 1·04, which gives ·419; add one year's purchase to the presumed value of the next incumbent's life (17·8), which gives 18·8, multiply this by the last result, ·419, which gives $18{\cdot}8 \times {\cdot}419$, or 7·88 nearly—the number of years' purchase which the next presentation is now worth—which, if the living be 1000*l.* a year, is 7880*l.*

For the Carlisle Table of Annuities, see Milne *On Annuities*, vol. ii. p. 595. For the Government Tables, see Mr. Finlaison's *Report to the House of Commons*, ordered to be printed 31 March, 1829, page 58, column 6.

ÆTOLIAN CONFEDERATION. Ætolia, according to the ancient geographers, consisted of two chief divisions, one on the coast, extending from the mouth of the Achelous eastwards along the north shore of the Corinthian gulf as far as its narrow entrance at Antirrhium—the other, called Epiktetos, or the acquired, was the northern and mountainous part. The length of sea-coast, as Strabo incorrectly gives it, from the mouth of the Achelous to Antirrhium, is 210 stadia, or about 21 miles: the same line of coast, according to the best modern charts, is about 42 miles, measuring in straight lines from one projecting point to another. If the great recesses of the sea about Anatolico and Mesolunghi were included, the distance would be much greater. The south-eastern boundary of Ætolia, which separated the province from that of the Locri Ozolæ, was a mountain range named Chalcis, afterwards, in its north-eastern course, taking the name of Corax. The north and extreme north-eastern boundaries of Ætolia were the small territory of Doris, the branches of Pindus, and part of the western line of Œta; but as

no ancient geographer has given anything like a definite boundary to Ætolia, and as we are still only imperfectly acquainted with the mountains of northern Greece, any further description is impossible. The western boundary was the Achelous.

The history of the Ætolians, as a nation, is closely connected with that of the Acarnanians, but, like the Acarnanians, they were a people of little importance during the most flourishing periods of the commonwealths of European Greece. After the death of Alexander the Great, B.C. 323, they came into notice by their contests with the Macedonian princes, who allied themselves with the Acarnanians. In the reign of Philip V. of Macedon (which commenced B.C. 220), the Ætolians, after seeing their chief town, Thermum, plundered by this king, and feeling themselves aggrieved by the loss of all they had seized from the Acarnanians, applied to the consul Valerius Lævinus (B.C. 210). Though this produced no beneficial effects, they formed a second treaty with the Romans (about B.C. 198) after the end of the second Punic war. The immediate object of the Romans was the conquest of Macedonia, but it proved eventually that this fatal alliance of the Ætolians was the first step that led to the complete subjugation of all Greece by the Romans. A series of sufferings and degradations led the way to the occupation of Ætolia, which was made part of the Roman province of Achæa. Under Roman dominion, the few towns of Ætolia almost disappeared: many of the inhabitants were transplanted to people the city of Nicopolis, which Augustus built at the entrance of the Ambracian gulf, opposite Actium, where he had defeated Antony (B.C. 30). Since the time of the Romans it is probable that the face of this country has undergone as few alterations, or received as few improvements from the hand of man, as the most remote parts of the globe. The Romans themselves under the emperors had not even a road through Acarnania and Ætolia, but followed the coast from Nicopolis to the mouth of the Achelous.

Under the Turkish empire, Ætolia was partly in the province of Livadia; and it is now comprised within the new kingdom of Greece.

The earliest traditions of Ætolia, properly known by that name, speak of a monarchical form of government under Ætolus and his successors; but this form of government ceased at a period earlier than any to which historical notices extend, and we find the Ætolians existing in a kind of democracy, at least during the time of their greatest political importance. This period extended from about B.C. 224, to their complete conquest by the Romans, B.C. 168, a period of about 50 years. The Ætolian league at one time comprehended the whole country of Ætolia, part of Acarnania and of South Thessaly, with the Cephallenian isles; and it had besides, close alliances with other places in the Peloponnesus, especially Elis, and even with towns on the Hellespont, and in Asia Minor. This alliance with Elis would tend to confirm the tradition of the early connexion already alluded to. Following, probably, the example of the Achæan league, the different parts of Ætolia formed a federal union, and annually chose a general or president, a master of the horse, a kind of special council called Apokletoi (the select), and a secretary, in the national congress held at Thermum about the autumnal equinox. Such scattered notices as we possess about their history and constitutional forms are found principally in the Greek writer Polybius (books ii. iv. xvii., &c.). Though the Ætolian confederation, such as it was in its earlier times, was anterior to the Achæan union of Dyme, Patræ, &c., yet its more complete organization was most probably an imitation of the Achæan league. A minute account of this confederation would be little more than conjecture.

(Schlosser, *Universalhistorische Uebersicht*, &c., vol. ii. p. l.; Hermann, *Lehrbuch*, &c.; the article *Achäischer Bund*, in the *Staats-Lexicon* of Rotteck and Welcker, contains all the necessary references.)

AFFINITY (from the Latin *adfinitas*) means a relationship by marriage. The husband and wife being legally considered as one person, those who are related to the one by blood are related to the other in

the same degree by *affinity*. This relationship being the result of a lawful marriage, the persons between whom it exists are said to be related *in law;* the father or brother of a man's wife being called his *father* or *brother-in-law*. Almost the only point of view in which affinity is a subject of any importance in the English law is as an impediment to matrimony; persons related by affinity being forbidden to marry within the same degrees as persons related by blood. [MARRIAGE.] It is in accordance with this rule that a man is not permitted by our law after his wife's death to marry her sister, aunt, or niece, those relations being all within the prohibited degrees of *consanguinity;* and therefore, according to the principle just laid down, the prohibition extends to the same relations by *affinity* also. This rule, which excludes from marriage those who are within certain degrees of affinity, is supposed to be founded on the Mosaic law; but the eighteenth chapter of Leviticus, on which the prohibition is founded, is interpreted by some persons as not relating to marriage; and in the case of a deceased wife's sister, the text seems to imply a permission of marriage after the wife's death. The degrees of relationship, both of consanguinity and affinity, within which marriages are prohibited, are contained in Archbishop Parker's Table, entitled "A Table of Kindred and Affinity, wherein whosoever are related are forbidden in Scripture and our laws to marry together." Parker, of his own authority, ordered this Table to be printed and set up in the churches of his province of Canterbury. The Constitutions and Canons Ecclesiastical, which were made in the reign of James I., confirmed Parker's Table, which thus became part of the marriage law so far as that law is administered by the ecclesiastical courts. Marriages within the prohibited degrees could formerly only be annulled by the ecclesiastical courts during the joint lives of the husband and wife; and consequently the offspring of such marriages, though the marriages were considered incestuous by the ecclesiatical courts, was legitimate unless the marriage was dissolved in the lifetime of both the parents. The Act 5 & 6 Wm. IV. c. 54, 1835, has declared that all marriages celebrated before the passing of that Act between persons being within the prohibited degrees of affinity shall not be annulled for that cause by any sentence of the ecclesiastical court; but that all marriages which shall hereafter be celebrated between persons within the prohibited degrees of consanguinity or affinity shall be absolutely null and void to all intents and purposes whatsoever. This act does not define what are the prohibited degrees, and this part of the enactment must be interpreted by a reference to Parker's Table and the Canons if the question arises before courts spiritual; and by statute or judicial decisions if it arises in the civil courts, as it may do in cases of prohibition or of succession. The principal statute is the 25 Hen. VIII. c. 32. An elaborate judgment was pronounced by Chief Justice Vaughan, in the celebrated case of Hill *v.* Good (Vaughan's *Reports*, 302), which affirmed that marriage with a wife's sister is unlawful; and this judgment, together with the doctrines prevailing in all our text-books from Lord Coke down to 1835, seems to establish that such is the law of England.

It is the prevailing opinion that this act renders all persons incapable of contracting a marriage who are within the prohibited degrees; and that the rule of law which makes a foreign marriage valid in England, if celebrated according to the law of the country where it was contracted, merely dispenses with the forms required in an English marriage, and has no reference to the parties between whom the marriage is made. This question is now being argued in the House of Lords, in the case of Sir Augustus d'Este, who claims the dukedom of Sussex, on the ground that the statutory prohibition of his father's marriage could apply only to England, and does not invalidate a marriage contracted (as that of the Duke of Sussex was) in strict conformity to the law of the country where it occurred. The recent statute may cause some doubt whether a marriage contracted in England by foreigners within the prohibited degrees of affinity

who could contract a valid marriage in their own country, shall be considered valid in England for every purpose; for instance, whether, in the case of the father's intestacy, the children and the wife could take his personal property in England, if the father was domiciled in England.

There are certain cases of prohibition, such as the prohibition against a man marrying his deceased wife's sister, which are considered by many persons to rest on no good reasons, and much has been urged of late years against some of the prohibitions in cases of affinity comprised in Parker's Table. The arguments in favour of maintaining the prohibitions in several of the cases included within Parker's Table seem to be insufficient, if the matter is viewed solely as a question of policy: and, as already observed, the divine authority of some of the prohibited cases cannot, in the opinion of many persons, be maintained. But opinion and prejudice are strongly opposed to any change in the law on this matter. (*Notes on the Prohibition of Marriage in cases of Collateral Affinity*, by Thomas Coates, London, 1842.)

The general rules on this subject are the same in Scotland as in England. The 5 & 6 Wm. IV. c. 54, does not extend to that part of the country. It is the general dictum of the authorities that a marriage with the sister of a deceased wife is null, but the opinion has been doubted, and there has been no opportunity for trying the question judicially.

In several of the United States marriages within the Levitical degrees, with some exceptions, are made void by statute. In some States it is not lawful for a man to marry his deceased wife's sister: in other States it is lawful. For instance, such a marriage may be contracted in New York, and not in Massachusetts. But such a marriage would be held valid in any state in which it is forbidden, and in all other states, if contracted in a state or country where the prohibition does not exist. (Kent, *Commentaries*, ii.)

The distinction between affinity and consanguinity is derived from the Roman law. The kinsfolk (cognati) of the husband and wife became respectively the Adfines of the wife and husband. We have borrowed the words affinity and consanguinity from the Roman law, but we have no term corresponding to adfines. The Romans did not reckon degrees of adfinitas as they did of consanguinity (cognato); but they had terms to express the various kinds of adfinitas, as socer, father-in-law; socrus, mother-in-law.

AFFIRMATION is the solemn asseveration made by Quakers, Moravians, and Separatists, in cases where an oath is required from others. This indulgence was first introduced by the statute 7 & 8 Wm. III. c. 34, which enacts that the solemn affirmation of Quakers in courts of justice shall have the same effect as an oath taken in the usual form. The provisions of this statute are explained and extended by 8 Geo. I. c. 6, and 22 Geo. II. c. 46, s. 36; but in all these statutes there is a clause expressly restraining Quakers from giving evidence on their affirmation in criminal cases. This exception, which Lord Mansfield called "a strong prejudice in the minds of the great men who introduced the original statute" (Cowper's *Reports*, p. 390), has been entirely removed by a recent enactment (9 Geo. IV. c. 32); and Quakers and Moravians are now entitled to give evidence in all cases, criminal as well as civil, upon their solemn affirmation. By 3 & 4 Wm. IV. c. 82, the people called Separatists are allowed to make affirmation instead of taking an oath. The Act 1 & 2 Vict. c. 77, allows the same privilege to persons who have been at any time Quakers, Moravians, or Separatists, and have ceased to be such, but still entertain conscientious objections to the taking of an oath. [OATH.] A curious question arose during the session of parliament of 1833 respecting the sufficiency of the affirmation of a Quaker, instead of the customary oaths, on his taking his seat in the House of Commons: the subject was referred to a committee, upon whose report the House resolved that the affirmation was admissible.

AGE. The common law of England has fixed certain times in the life of a man and woman at which they become legally capable of doing certain acts and owing certain duties, of which before attaining

this age they were incapable. Thus, at the age of twelve years a man may take the oath of allegiance; at fourteen, which for many purposes is considered the age of discretion, a person of either sex may choose a guardian, and may also, according to ancient authorities, be a witness in courts of justice. As to the capacity to be a witness, the rule is at the present day considerably relaxed, for much younger children are frequently permitted to give evidence, after it has been ascertained by examination that they understand the nature of an oath. A female at the age of twelve years, and a male at the age of fourteen years, could formerly make a will of personal estate; but it was provided by statute (33 & 34 Hen. VIII. c. 5) that no person under the age of twenty-one years should make a will of lands. The act of 1 Vict. c. 26, declares that no will made by any person under the age of twenty-one years is valid. A person may be appointed executor at any age, but he cannot act till he is twenty-one.

With respect to matrimony, a woman may consent to marriage at twelve, and a man at fourteen years of age; though parties under the age of twenty-one years cannot actually marry without the consent of their respective parents or guardians. [MARRIAGE.] The age of twenty-one years is, for most civil purposes, the full age both of a man and woman, at which period they may enter into possession of their real and personal estates, may manage and dispose of them at their discretion, and make contracts and engagements. All persons under the age of twenty-one are legally called Infants. A man cannot be ordained a priest till twenty-four, nor be a bishop till thirty years of age. A man cannot be a member of the House of Commons before he has attained the age of twenty-one. In the Congress of the United States of America, a member of the Senate must not be under thirty, and to be eligible to a seat in the House of Representatives it is necessary to have attained the age of twenty-five. In the French Chamber of Peers a member may take his seat at the age of twenty-five, but he cannot vote until he has attained the age of thirty. A member of the Chamber of Deputies must not be under the age of thirty. An elector must be twenty-five years old; and before the Revolution of 1830 no one could vote under thirty. The deputies of the Swedish Diet must be twenty-five. A deputy of the Spanish Cortes must also be twenty-five. Under the new Greek constitution a senator must be at least forty years of age; or he must have filled certain offices in the state.

With respect to criminal offences, the law of England regards the age of fourteen years as the age at which a person is competent to distinguish between right and wrong. Under the age of seven years a child is not in any case responsible by law for an offence committed by him; but above that age, and under the age of fourteen years, if it clearly appears that a child is conscious of the nature and wickedness of the crime he commits, he may be tried and punished for it. A very singular instance is related by Mr. Justice Foster of a boy nine years old, who, under circumstances of malice and premeditation, had killed his companion, and hidden the dead body with much care and cunning, and who was tried for murder, and found guilty. The case was afterwards considered by the twelve judges, who thought that the circumstance of hiding the dead body proved the fact of consciousness of guilt, and therefore a capacity of distinguishing good from evil, inconsistent with the presumption of innocence arising from the tender age of the child; and they unanimously agreed that he was a proper subject for capital punishment. (Foster's *Crown Cases*, p. 72.)

The statute 9 Geo. IV. c. 31, §§ 17, 18, makes it felony, without benefit of clergy, for a man to have carnal knowledge of a female who is under ten years of age; and the carnal knowledge of a female above ten and under twelve is made a misdemeanor punishable by imprisonment and hard labour.

In the Roman system there were three periods of age which had reference to legal capacity: 1, Infantia, or the period from birth to the completion of the seventh year; 2, from the termination of

Infantia to the attainment of puberty, when persons were called Puberes; 3, from the attainment of puberty to the twenty-fifth year, during which time males were called Adolescentes, or Minores. From the attainment of the twenty-fifth year they were called Majores. An Infans could do no legal act. A person under the age of puberty could do the necessary legal acts in respect of his property with the sanction (auctoritas) of his tutor, who was the guardian of his property. It was somewhat unsettled what was the age at which a male attained puberty, but the best opinions fixed it at fourteen. A woman attained puberty at the age of twelve. Males who were puberes could manage their property, contract marriage, and make a will. Roman women of all ages were under some legal incapacities, but the incapacities of sex do not belong to the present subject. [WOMAN.] Male persons between the age of puberty and twenty-five were protected to a certain extent in their dealings by a Lex Plætoria, and the rules of the Prætorian Edict, which were founded upon it. Under the Emperor Marcus Aurelius, all persons under twenty-five were required to have a Curator, whose functions and powers were very similar to those of the Tutor up to the age of puberty. (Savigny, *Von dem Schutz der Minderjährigen, Zeitschrift für die Geschichtliche Rechtswissenschaft*, x.)

AGE OF LIFE. [MORTALITY.]

AGENT (from the French *Agent*, and that from the Latin *Agens*). An agent is a person authorized by another to do acts or make engagements in his name; and the person who so authorizes him is called the principal.

An agent cannot be appointed to bind his principal by deed otherwise than by deed; nor can an agent be appointed by a corporation aggregate (unless it be for certain ordinary and inferior purposes) otherwise than by deed: and for the purpose of making leases and other acts specified in the first, second, and third sections of the Statute of Frauds, the authority of the agent must be in writing. In all other cases no particular form is necessary: in commercial affairs agents are usually commissioned by a letter of orders, or simply by a retainer; but a verbal appointment is sufficient; and even the mere fact of one person's being employed to do any business whatever for another will create between the parties the relation of principal and agent.

An agent's authority (unless it is an authority coupled with an interest, such as a power of attorney granted as a security for a debt) may, in general, be revoked by the principal at any time. It also ceases upon his death or bankruptcy.

There are many kinds of agents, known by specific names, such as bailiffs, factors, brokers, &c. The particular rights, duties, and liabilities of each of these will be found under their respective heads. The object of this article is to state the general principles of law, which are applicable to all.

In the first place, we shall explain what are the rights and duties with respect to one another, resulting from the relation of principal and agent; and, secondly, what are the rights and duties with respect to third persons, resulting from the relation of principal and agent.

I. First, of the relative rights and duties of principal and agent.

1. The first duty of an agent is to use faithfully, and in its full extent, the authority which has been given him. An agent's authority is said to be limited when he is bound by precise instructions; and unlimited, when he is not so bound. When his authority is limited, an agent is bound to adhere strictly to his instructions. Thus, if instructed to sell, he has no right to barter; nor if instructed to sell at a certain price, is he authorized to take less.

When the agent's authority is not limited by precise instructions, his duty is to act in conformity with what may reasonably be presumed to be the intentions of his employer; and in the absence of all other means of ascertaining what these intentions are, he is to act for the interest of his principal, according to the discretion which may be expected from a prudent man in the management of his own business. Thus, if he is authorized to sell, and no price is limited by his instructions, he must endeavour to obtain the best price for the goods. If there

have been other transactions of the same nature between the parties, it is to be presumed that the principal intends that the same mode of dealing should be pursued, which, in former cases, he had either prescribed or approved.

In mercantile transactions it is a rule of universal application, that, in the absence of other instructions, the principal must be presumed to intend that his agent should follow the common usage of the particular business in which he is employed. This, therefore, is the course which it is the agent's duty to pursue; and he will, in all cases, be justified in so doing, even though, under the particular circumstances, he might have acted otherwise to the greater advantage of his principal. Thus a factor ought to sell for ready money, but if he is employed in a dealing or trade where the usage is to sell upon credit, he will be authorized in selling to a person of good credit, and giving such time as is reasonable and customary.

An authority is always to be so construed as to include all necessary or usual means of executing it with effect. An agent is, therefore, authorized to do all such subordinate acts as are either requisite by law, in order to the due performance of the principal objects of the instructions, or are necessary to effect it in the best and most convenient manner, or are usually incidental to it in the ordinary course of business. Thus it is the duty of an agent employed in the receipt or dispatch of goods to take care that the custom-house duties are paid, and the proper entries made; and he will be authorized in making any advances, as well for such incidental charges as warehouse-room, as for any other expense necessarily incurred for the preservation of the property.

2. The next duty of an agent is to exercise proper diligence and skill. He is required to use, in the concerns of his employer, the same diligence and care which would be expected from a prudent man in the management of his own business; and he is bound, without any particular instructions, to take every precaution ordinarily used for the safety and improvement of property intrusted to him. He must also possess and exercise such a competent degree of skill and knowledge as may in ordinary cases be adequate to the accomplishment of the service undertaken.

If an agent does an act which is not warranted by his authority, either express or implied; or if he does an act within his authority, but with such gross negligence or unskilfulness that no benefit can accrue from it, the principal may either reject or adopt what he has done. But if he rejects it, he must do so decisively from the first, and give his agent notice thereof within reasonable time; for if he tacitly acquiesce in what has been done, and still more if he in any way act upon it, he will be presumed to have adopted it. Thus, if an agent puts out his employer's money at interest without his authority; or if a factor, employed to purchase, deviates from his instructions in price, quality, or kind; or if he purchases goods which he might at the time have discovered to be unmarketable, the principal may disavow the transaction: but if, in the first cases, he knowingly receives the interest, or, in either of the others, if he deals with the property as his own, he adopts the act of the agent, and relieves him from all responsibility for the consequences.

But if he does not either expressly or impliedly adopt such act, the whole hazard of it lies with the agent, even though he did it in good faith, and for the interest of his employer. Any profit or advantage that may accrue from it he must account for to his principal; and if loss ensues, he is bound to make it good to him. An agent is likewise answerable to his principal for all damage occasioned by his negligence or unskilfulness. This responsibility applies in all cases, not only to the immediate consequences of his misconduct or neglect, but likewise to all such losses as, but for his previous misconduct or neglect, would not have occurred; such, for instance, as the destruction of goods by fire in a place where he had improperly suffered them to remain; but it does not extend to such losses by fire, robbery, or otherwise, as are purely accidental, and happen by no default of his own: and his responsibility

extends to the whole amount of the damage suffered by the principal, either by direct injury occasioned to his own property, or by his being obliged to make reparation to others.

If an agent's negligence is so gross, or his deviation from his authority so great, as to amount to a breach of his contract, which contract may be either a formal agreement, or it may be merely the legal contract implied in the relation of agent and principal, the agent is liable to an action for such breach of duty or of contract, whether any injury has been sustained by it or not; but if no injury has been in fact sustained, the damages will be merely nominal.

3. The third general duty of an agent is to keep a clear and regular account of his dealings on behalf of his principal; to communicate the results from time to time; and to account when called upon, without suppression, concealment or overcharge.

An agent is not in general accountable for money until he has actually received it, unless he has by improper credit, or by other misconduct or neglect, occasioned a delay of payment. But an agent acting under a commission *Del credere*, that is, one who has undertaken to be surety to his principal for the solvency of the persons whom he deals with, is, in their default, accountable for the debt; and in all cases where an agent has actually received money on behalf of his principal, he is bound to take care of it according to the general rules which regulate his conduct; and if any loss is occasioned by the fraud or failure of third persons, he will, unless his conduct be warranted by his instructions, or the usage of trade, be bound to make it good; if a stranger, for instance, calls upon him by a written authority to transfer the money in his hands, and the authority is a forgery, he will be accountable for all that is transferred under it.

The principal is in general entitled not only to the bare amount of what has been received by his agent, but to all the increase which has accrued to the property while in his possession. The agent is, therefore, accountable for the interest, if any has actually been made, upon the balance in his hands; and likewise for every sort of profit or advantage which he may have derived by dealing or speculating with the effects of his principal.

4. It is also the duty of an agent to apprize his principal, with all convenient expedition, of all material acts done or contracts concluded by him.

5. The conduct of an agent, confidentially intrusted and relied on for counsel and direction—as an attorney, for instance—is liable to a stricter investigation, if he in any way acts improperly. It is also a general principle, that an agent cannot make himself an adverse party to his principal; for instance, if he is employed to sell, he cannot make himself the purchaser: such a transaction is liable to be set aside in a court of equity, unless it be made clearly to appear that the principal gave his consent to it, and that the agent furnished him with all the knowledge which he himself possessed: and in like manner, an agent employed to purchase cannot be himself the seller; if he acts as such, he is accountable to his principal for all the profits he has made by his indirect dealing.

We are now to consider what are the duties of the principal to his agent; or what are the rights of an agent.

1. The first right of an agent is to his commission; that is, the remuneration to be paid to him in return for his services. The amount of commission is sometimes determined by agreement between the parties; sometimes it is regulated by the usage of trade; and in some few cases, as of brokerage for the procuring of loans, &c., the amount of commission is limited by act of parliament.

An agent has no right to commission for doing any act not within his authority, unless it is afterwards adopted by his principal. He may also forfeit his right to commission by misconduct: as, if he keeps no account; if he makes himself an adverse party to his principal; or if, in consequence of his negligence or unskilfulness, no benefit accrues to the principal from the services performed.

2. Besides his commission, an agent is entitled to be reimbursed all such advances made on behalf of his principal,

as are justified by his authority, whether expressed or implied, or subsequently sanctioned by his principal. And cases may sometimes occur of urgent danger, when there are no means of referring for instructions, in which an agent, acting for the best, is justified in making advances without particular directions, and under exigencies not provided for by regular rules of business. Thus if, on account of the lateness of the season, or other good cause, he insures the cargo without orders, he is entitled to charge his principal with the premium, and in such a case even the assent of the principal would be inferred from very slight circumstances. But an agent is not entitled to be reimbursed payments that are merely voluntary and officious; nor expenses occasioned by his own negligence or unskilfulness.

An agent has also, as a further security, a lien upon the property of his principal; that is, a right to retain it in his possession in the nature of a pledge for the satisfaction of his demands. Lien is either particular or general. A particular lien is a right to retain the thing itself in respect of which the claim arises. This right is very extensively admitted in our law, and is possessed by bailees in general, and consequently by all agents in the nature of bailees. [LIEN.]

General lien is a right to retain any property of the principal which may come into the agent's possession in the regular course of business. This, being an extension of the general right, exists where it is created by contract, by the previous dealings of the parties, or by the usage of trade. Factors, packers, where they are in the nature of factors, insurance-brokers, and bankers, have, by usage, a general lien in their respective employments.

This right may in general be exercised in respect of any claim to commission or reimbursement which the agent may have acquired in the due execution of his authority; but it does not extend to demands arising from transactions not within his course of dealing as such agent.

An agent's lien does not attach unless the property is actually in his possession: a consignee has therefore no lien on goods consigned to him, if the consignor stops them before they come into his hands; nor unless they have come into his possession in the ordinary course of business: he has consequently no lien on property which has been casually left in his office, which has been deposited with him as a pledge for a specific sum, or which he has obtained possession of by fraud or misrepresentation. And if an agent parts with the possession of the property, the lien is in general lost: but by stat. 4 Geo. IV. c. 83 (the factor's act), if a factor pledges the goods or commercial documents of his principal as a security for advances made, with notice that they are not his own; or if, without such notice, he pledges them for a pre-existing debt due from himself, the lien of the factor on such goods or documents is transferred to the person with whom they are pledged; that is to say, in other words, he acquires the same right upon them which the factor, while they remained in his possession, could have enforced against the principal.

The right of lien may be destroyed by the special agreement of the parties; and if the agent enters into a contract with his employer inconsistent with the exercise of the right (as if he stipulates for a particular mode of payment), he must be understood to waive it.

We have hitherto considered only the case of hired or paid agents, between whom and gratuitous agents there exists nearly the same difference with respect to their relative rights and duties as between bailees for hire and gratuitous bailees. (Sir W. Jones, *On the Law of Bailments.*)

The responsibility of a gratuitous agent (the mandatarius of the Roman law) is much less than that of one who is paid for his services. He will in general incur no liability, provided he acts with good faith, and exercises the same care in the business of his employer as he would in his own. But if he is guilty of gross negligence, or if, having competent skill, he fails to exert it, he will be answerable to his employer for the consequences. He has of course no right to commission, but he is entitled to

be reimbursed for any reasonable payments made, or charges incurred in behalf of his employer. (As to the Roman mandatarius, see Gaius, iii. 155—162, iv. 83, 84; *Dig.* 17. tit. 1.)

II. It remains to explain the consequences of the relation of principal and agent, as between the parties and third persons: and, first, as between the principal and third persons; and, secondly, as between the agents and third persons.

First, then, as between the principal and third persons: it is a general rule that the act of the agent is to be considered as the act of the principal; it gives the principal the same rights, and imposes on him the same obligations, as if he had done it himself.

A bargain or agreement entered into by an agent is therefore binding upon his principal, whether it tends to his benefit or his disadvantage; and, in order to have this effect, it is not absolutely necessary that it should actually be within the agent's real authority, either express or implied, provided it be within what may most properly be called his *apparent authority*—that is, provided it is such as the person dealing with the agent might under the circumstances reasonably presume to be within his authority.

An authority may be presumed, first, from the principal's having previously authorized or sanctioned dealings of the same nature. Thus, if a person has been in the habit of employing another to do any act,—as, for instance, to draw or indorse bills,—he will be answerable for any subsequent acts of the same nature,—at least, until it is known, or may reasonably be presumed, that the authority which he had given has ceased. An authority may likewise be presumed from the conduct of the principal, with reference to the subject-matter of the transaction in question. For if a person authorizes another to assume the apparent right of engaging in any transactions, the apparent authority must, as far as regards the rights of third persons, be considered as the real authority. Thus, a broker employed to purchase has no authority to sell; and if he does, his employer may (unless the sale was in open market) reclaim the goods so sold, into whatever hands they may have come. But if the principal has permitted the broker to assume the apparent right of selling the goods, he will be bound by a sale so apparently authorized.

Upon the same principle, when a general agent is employed,—that is, an agent authorized to transact all his employer's business of a particular kind, as to buy and sell certain wares, or to negotiate certain contracts,—he must be presumed to have all the authority usually exercised by agents of the same kind in the ordinary course of their employment: and though the principal may have limited his real authority by express instructions, yet he will not thereby be discharged from obligations incurred in the ordinary course of trade towards persons who have dealt with the agent without any knowledge of such limitation. Thus where an agent purchases goods on credit, the seller may come on the principal for payment: and this right cannot be affected by any private agreement between the principal and agent, by which the agent may have stipulated to be liable to the seller.

Although the agent is, in all these cases, ultimately answerable to his employer for any damage that may follow from his having entered into an engagement not within his authority; yet the principal is, in the first instance, bound to keep an engagement so entered into by his agent upon a reasonable presumption of authority.

But in the case of a special agent (that is, of a person appointed merely to do certain particular acts), as no presumption of authority can arise from usage of trade, so the principal will not be bound by any act not within the real authority of the agent,—and it lies upon those who deal with the agent to ascertain what that authority actually is.

Thus, in order to illustrate more fully the difference in this respect between general and special agents:—If a person employs a stable-keeper, whose general business it is to sell horses, to sell a particular horse for him, and he warrants the horse to be sound, inasmuch as the giving such warranty is within the ordinary course of his employment, the owner

will be bound by such warranty, even though he may have directed expressly that none should be given; but if he employs another person to sell his horse, whose ordinary business it is not to sell horses,—then, although, if he has given no orders to the contrary, the agent will be justified in giving a warranty, as being a thing incidental to the main object of his employment; yet if he has given express orders that no warranty should be given, and the agent gives a warranty in opposition to his orders, he will not be bound by it.

As the agreement made by an agent, so likewise all his dealings in connection with it, provided they are within his real or apparent authority, are as binding on the principal as if they were his own acts. Thus the representations made by an agent, at the time of entering into an agreement (if they constitute a part of such agreement, or are in any way the foundation of or inducement to it), and, in many cases, even the admissions of an agent as to anything directly within the course of his employment, will have the same effect as if such representations or admissions had been made by the principal himself. So also if notice of any fact is given, or if goods are delivered to an agent, it will be considered as notice or delivery to the principal. And in general, payment to an agent has the same effect as if it had been made to the principal, and in such cases the receipt of the agent is the receipt of the principal. But such payment is not valid if it is not warranted by the apparent authority of his agent. Thus, if money is due on a written security, as long as the security remains in the hands of an agent it is to be presumed that he is authorized to receive the money, and payment to him will therefore discharge the debt: but if the agent has not the security in his possession, the debtor pays him at his own risk, and will be liable, in case the agent should not account for it to his principal, to pay it over again.

If the principal gives notice to the buyer not to pay the money to the factor with whom he made the bargain, he will in general not be justified in doing so; but if the factor had a lien upon the goods for his general balance, he has a right to require the buyer to pay him instead of his principal: and such payment to the factor, notwithstanding any notice given by the principal, will be a discharge of the debt.

A principal is in general liable for all damage occasioned to third persons by the negligence or unskilfulness of his agent when he acts within the scope of his employment; and for any misconduct or fraud committed by him, if it be either at his express command or within the limits of his implied authority.

From this liability, however, it is reasonable that those persons should be exempted who, though they appear in some degree in the character of principals, yet have no power in the appointment of those who act under them. Thus the postmasters-general, and persons at the head of other public offices, have been held not to be liable for the conduct of their inferior officers. On the same principle, the owners and masters of vessels are by statute released from all liability to third persons from the negligence or unskilfulness of the pilots by whom they are navigated into port.

It now remains to state what are the effects of the relation of principal and agent, as between the agent and third persons.

An agent is not in general personally responsible on any contract entered into by him on behalf of his principal: to this rule, however, there are several exceptions.

First. If an agent has so far exceeded his authority that his principal is not bound by his act; as for instance, if an agent without any authority undertakes for his principal to pay a certain sum, or if a special agent warrants goods, contrary to his instructions; and the principal refuses to adopt such undertaking or warranty, the agent alone is liable to the person to whom it was given.

Secondly, an agent is liable when the contract was made with him not as agent. And, therefore, if in any contract made on behalf of his principal, the agent binds himself by his own express undertaking, or if the circumstances of the transaction are such that the credit was originally

given to him and not to the principal (whether such principal were known at the time or not), in either of these cases he will be liable, in the first instance, to the persons with whom he has dealt.

For the same reason, when an agent takes upon himself to act in his own name, and gives no notice of his being employed in behalf of another person—as if a factor delivers goods as his own and conceals his principal—he is to be taken, to all intents, as the principal, and the persons who have dealt with him are entitled to all the same rights against him as if he actually were so. They may, for instance, in an action by the principal on demand arising from such transactions, set off a debt due from the agent himself; which they could not have done, if they had known that he acted only as an agent. And if he afterwards discloses his principal, he is, nevertheless, not discharged from his liability, —those with whom he has dealt may, at their option, come either upon him on his personal contract, or on the principal upon the contract of his agent.

An agent is responsible to third persons for any wrongful acts, whether done by the authority of his principal or not; and in most instances the person injured may seek compensation either from the principal or the agent, at his option.

An agent cannot delegate to another the authority which he has received, so as to create between his employer and that other person the relation of principal and agent; but he may employ other persons under him to perform his engagements, and the original agent is responsible to his principal as well for the conduct of such sub-agents as for his own: but with respect to damage sustained by third persons from the wrongful acts of such sub-agents, the case is different; such damages must be recovered either from the person who in fact did the injury, or from the principal for whom the act was done. The original agent is responsible to third persons only for his own acts, and such as are done at his command.

If an agent who is intrusted with money or valuable security, with written directions to apply the same in any particular manner, in violation of good faith converts it to his own use;—or if an agent who is intrusted with any chattel, valuable security, or power of attorney for the transfer of stock, either for safe custody or for any special purpose, in violation of good faith, and without authority, sells or pledges, or in any manner converts the same to his own use, he is guilty of a misdemeanor punishable with fourteen years' transportation, or to fine and imprisonment at the discretion of the court. But this does not extend to prevent his disposing of so much of any securities or effects on which he has a lien or demand, as may be requisite for the satisfaction thereof. It is also a misdemeanor, punishable in the same manner, if a factor or agent employed to sell, and intrusted with the goods or the documents relating to them, pledges either the one or the other, as a security for any money borrowed or intended to be borrowed, provided such sum of money is greater than the amount which was at the time due to the agent from the principal, together with any acceptances of the agent on behalf of his principal. (Stat. 7 & 8 Geo. IV. c. 29, s. 49, &c.)

The 5 & 6 Vict. c. 39, entitled "An Act to amend the law relating to advances *bonâ fide* made to agents intrusted with goods," facilitates and gives protection to the common practice of making advances on the security of goods or documents to persons known to have possession thereof as agents only. According to the above act, any agent who is in the possession of goods or of the documents of title to them is to be held in law as the owner, to the effect of giving "validity to any contract or agreement by way of pledge, lien, or security *bonâ fide* made by any person with such agent." The agent may receive back commodities or titles which have been pledged for an advance and may replace them with others, but the lender's lien is not to extend beyond the value of the original deposit. The documents which are held to authorize the agent in disposing of property represented by them, and the transference of which is a sufficient security to the lender, are—"any bill of lading, India warrant, dock-warrant, warehouse-keeper's certificate,

warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or delivery, the possessor of such document to transfer or receive goods thereby represented." The property represented by any document is held to be conveyed as soon as the document is transferred, although the property is not in the agent's hands; and an advance of money on consignment or indorsation is valid although the consignment or indorsation do not take place at the date of the agreement. A contract by the agent's clerk, or any person acting for him, is binding. An agent granting a fraudulent security is liable to transportation, or such other punishment by fine or imprisonment, or both, as the court may award. There are provisions in the act for enabling the owner to redeem his goods while they remain unsold, on satisfying the person who holds them as a security; and for protecting the principal in the case of the agent's bankruptcy.

AGIO, a term used to denote the difference between the real and nominal value of moneys. The Italian word Agio means ease or convenience; but the Italian for agio, in the sense in which we use the word, is *aggio*, which is explained to mean "an exchange of money for which the banker has some consideration." The word is used sometimes to express the variations from fixed pars or rates of exchange, but more generally to indicate by per centages the differences in the valuations of moneys. The following is a simple instance of the meaning of the term agio, as it is given by Ganilh (*Dictionnaire Analytique d'Economie Politique*):—"Five gold pieces of 20 francs, as they issue from the mint, are worth 100. francs. But if they have been reduced in weight, either by the wear of circulation or by improper means, to the amount of 5 per cent., their real value is only 95 francs, though their nominal value remains the same. The sum of 5 francs, which is necessary to make the real equal to the nominal value, is the agio."

The metallic currency of wealthy states generally consists of its own coin exclusively, and it is in the power of the state to prevent the degradation of that coin below the standard, so that no calculations of agio, strictly so called, are rendered necessary. In smaller states, the currency seldom entirely consists of their own coin, but is made up of the clipt, worn, and diminished coins of the neighbouring countries with which the inhabitants have dealings. Under these circumstances, banks were, at different times, established by the governments of Venice, Hamburg, Genoa, Amsterdam, &c., which, under the guarantee of the state, should be at all times bound to receive deposits and to make payments, according to some standard value. The money or obligations of these banks, being better than the fluctuating and deteriorated currency of the country, bears a premium equivalent to the deterioration, and this premium is called the agio of the bank.

To facilitate his money-dealings, every merchant trading in a place where the deterioration of the currency is thus remedied, must have an account with the bank for the purpose of paying the drafts of his foreign correspondents, which drafts are always stipulated to be paid in bank or standard money. The practice being thus universal, the commercial money-payments of the place are usually managed without the employment of coin, by a simple transfer in the books of the bank from the account of one merchant to that of another. The practical convenience which this plan of making their payments affords to merchants, who would otherwise be obliged, when discharging obligations incurred in standard money, to undergo troublesome and expensive examinations of the various coins in use, causes the money of the bank to bear a small premium above its intrinsic superiority over the money in circulation, so that the agio of the bank does not usually form an exact measure of that superiority.

As the current coins of every country have a kind of medium value at which they are generally taken, the term agio is also applied to express what must be be paid over and above this medium value.

But the kinds of money on which, in the case of exchange, an agio is paid, are not always the more valuable intrinsically, but those which are most in request. For instance, when either gold or paper money is in demand for the purpose of being sent out of the country, those who hold the one or the other may keep it back till an agio is offered them in the current silver money; and a long period may often elapse before a sufficient quantity of the gold coin that has been sent out has come back to enable people to have it without an agio, while it may happen that at a subsequent time an agio must be paid in order to procure current silver money in place of the gold coin. (Rotteck, *Staats-Lexicon.*)

The term agio is also used to signify the rate of premium which is given when a person having a claim which he can legally demand in only one metal, chooses to be paid in another. Thus in France silver is the only legal standard, and payments can be demanded only in silver coin, a circumstance which is found to be so practically inconvenient, that the receiver will frequently pay a small premium in order to obtain gold coin, which is more easily transportable: this premium is called the agio on gold.

There are various meanings of agio in the French language, which are perversions of the proper and original meaning.

AGIOTAGE, in the French language, is a new word, which is used to express speculations on the rise and fall of the public debt of states, or the public funds, as they are often called. The person who speculates on such rise or fall is called Agioteur. (Ganilh, *Dict. Analytique d'Economie Politique.*)

AGNATE. [CONSANGUINITY.]

AGRARIAN LAWS (Agrariæ Leges). Those enactments were called Agrarian laws by the Romans which related to the public lands (Ager Publicus). The objects of these Agrarian laws were various. A law (lex) for the establishment of a colony and the assignment of tracts of land to the colonists was an Agrarian law. The laws which regulated the use and enjoyment of the public lands, and gave the ownership of portions of them to the commonalty (plebes) were also Agrarian laws. Those Agrarian laws indeed which assigned small allotments to the plebeians, varying in amount from two jugera to seven jugera (a jugerum is about three-fourths of an English acre), were among the most important; but the Agrarian laws, or those clauses of Agrarian laws which limited the amount of public land which a man could use and enjoy, are usually meant when the term Agrarian laws is now used.

The origin of the Roman public land, or of the greater part of it, was this: Rome had originally a small territory, but by a series of conquests carried on for many centuries she finally obtained the dominion of the whole Italian peninsula. When the Romans conquered an Italian state, they seized a part of the lands of the conquered people; for it was a Roman principle that the conquered people lost everything with the loss of their political independence; and what they enjoyed after the conquest was a gift from the generosity of the conqueror. A state which submitted got better terms than one which made an obstinate resistance. Sometimes a third of their land was taken from the conquered state, and sometimes two-thirds. It is not said how this arrangement was effected; whether each landholder lost a third, or whether an entire third was taken in the lump, and the conquered people were left to equalize the loss among themselves. But there were probably in all parts of Italy large tracts of uncultivated ground which were under pasture, and these tracts would form a part of the Roman share, for we find that pasture land was a considerable portion of the Roman public land. The ravages of war also often left many of the conquered tracts in a desolate condition, and these tracts formed part of the conqueror's share. The lands thus acquired could not always be carefully measured at the time of the conquest, and they were not always immediately sold or assigned to the citizens. The Roman state retained the ownership of such public lands as were not sold or given in allotments, but allowed them to be occupied and enjoyed by any Roman citizen, or, according to some, by the patricians only at first, and in some cases

certainly by the citizens of allied and friendly states, on the payment of a certain rent, which was one-tenth of the produce of arable land and one-fifth of the produce of land planted with the vine, the fig, the olive, and of other trees the produce of which was valuable, as the pine. It does not appear that this occupation was originally regulated by any rules: it is stated that public notice was given that the lands might be occupied on such terms as above mentioned. Nor was the occupation probably limited to one class: either the patricians or the plebeians, either of these two portions of the Roman community, might occupy the lands. The enjoyment of the public land by the plebes is at least mentioned after the date of the Licinian laws. Such an arrangement would certainly be favourable to agriculture. The state would have found it difficult to get purchasers for all its acquisitions; and it would not have been politic to have made a free gift of all those conquered lands which, under proper management, would furnish a revenue to the state. Those who had capital, great or small, could get the use of land without buying it, on the condition of paying a moderate rent, which depended on the produce. The rent may not always have been paid in kind, but still the amount of the rent would be equivalent to a portion of the produce. The state, as already observed, was the owner of the land: the occupier, who was legally entitled the Possessor, had only the use (usus). This is the account of Appian (*Civil Wars*, i. 7, &c.). The account of Plutarch (*Tiberius Gracchus*, 8) is in some respects different. Whatever land the Romans took from their neighbours in war, they sold part and the rest they made public and gave to the poor to cultivate, on the payment of a small rent to the treasury (aerarium); but as the rich began to offer a higher rent, and ejected the poor, a law was passed which forbade any person to hold more than 500 jugera of (public) land. The law to which he alludes was one of the Licinian laws. (*Camillus*, 39.)

This mode of occupying the land continued for a long period. It is not stated by any authority that there was originally any limit to the amount which an individual might occupy. In course of time these possessions (possessiones), as they were called, though they could not be considered by the possessors as their own, were dealt with as if they were. They made permanent improvements on them, they erected houses and other buildings, they bought and sold possessions like other property, gave them as portions with their daughters, and transmitted them to their children. There is no doubt that a possessor had a good title to his possession against all claimants; and there must have been legal remedies in cases of trespass, intrusion, and other disturbances of possession. In course of time very large tracts had come into the possession of wealthy individuals, and the small occupiers had sold their possessions, and in some cases, it is said, had been ejected, though it is not said how, by a powerful neighbour. This, it is further said, arose in a great degree from the constant demands of the state for the services of her citizens in war. The possessors were often called from their fields to serve in the armies, and if they were too poor to employ labourers in their absence, or if they had no slaves, their farms must have been neglected. The rich stocked their estates with slaves, and refused to employ free labourers, because free men were liable to military service, and slaves were not. The free population of many parts of Italy thus gradually decreased, the possessions of the rich were extended, and most of the labourers were slaves. The Italian allies of Rome, who served in her armies and won her victories, were ground down by poverty, taxes, and military service. They had not even the resources of living by their labour, for the rich would only employ slaves; and though slave labour under ordinary circumstances is not so profitable as free labour, it would be more profitable in a state of society in which the free labourers were liable at all times to be called out to military service. Besides this, the Roman agricultural slave was hard worked, and an unfeeling master might contrive to make a good profit out of him by a few years of bondage; and if he died, his place would readily be

supplied by a new purchase. Such a system of cultivation might be profitable to a few wealthy capitalists, and would ensure a large amount of surplus produce for the market; but the political consequences would be injurious.

The first proposition of an Agrarian law, according to Livy, was that of the consul Spurius Cassius, B.C. 484, a measure, as Livy observes, which was never proposed up to his time (the period of Augustus) without exciting the greatest commotion. The object of this law was to give to the Latins half of the lands which had been taken from the Hernici, and the other half to the plebes. He also proposed to divide among the plebes a portion of the public land, which was possessed by the patricians. The measure of Cassius does not appear to have been carried, and after the expiration of his office, he was tried, condemned, and put to death, on some charge of treasonable designs, and of aspiring to the kingly power. The circumstances of his trial and death were variously reported by various authorities. (Livy, ii. 41.) Dionysius (*Antiq. Rom.* viii. 76) says that the senate stopped the agitation of Cassius by a measure of their own. A Consultum was passed to the effect that ten men of consular rank should be appointed to ascertain the boundaries of the public land, and to determine how much should be let and how much distributed among the plebes; it was further provided that if the Isopolite and allied states should henceforth aid the Romans in making any further acquisitions of land, they should have a portion of it. The Senatus Consultum being proposed to the popular assembly (δῆμος), whatever that body may here mean, stopped the agitation of Cassius. This statement is precise enough and consistent with all that we know of the history of the Agrarian laws; nor does its historical value seem to be much impaired by the remarks of Niebuhr upon it (*Licinian Rogations*, vol. iii. note 12).

At length, in the year B.C. 375, the tribunes C. Licinius Stolo and L. Sextius brought forward among other measures an Agrarian law, which after much opposition was carried in the year B.C. 365. The measures of Licinius and his colleague are generally spoken of under the name of the Licinian Rogations. The provisions of this law are not very exactly known, but the principal part of them may be collected from Livy (vi. 35), Plutarch (*Tib. Gracchus*, 8), and Appian (*Civil Wars*, i. 8). No person was henceforth to occupy more than five hundred jugera of public land for cultivation or planting; and every citizen was qualified to hold to that amount, at least of public land acquired subsequently to the passing of the law. It was also enacted that every citizen might feed one hundred head of large cattle and five hundred head of small cattle on the public pastures. Any person who exceeded the limits prescribed by the law was liable to be fined by the plebeian ædiles, and to be ejected from the land which he occupied illegally. The rent payable to the state on arable land was a tenth of the produce, and that on lands planted with fruit or other trees was a fifth. This is not mentioned by Appian as a provision of that law which limited the possessions to five hundred jugera, but as an old rule; but if the law of Licinius contained nothing against it, this provision would of course remain in force. A fixed sum was also paid, according to the old rule, for each head of small and large cattle that was kept on the public pastures.

The rent was farmed or sold for a lustrum, that is, five years, to the highest bidder. There was another provision mentioned by Appian as part of the law which limited possession to five hundred jugera, which is very singular. To render it more intelligible, the whole passage should be taken together, which is this: "It was enacted that no man should have more of this land (public land) than five hundred jugera, nor feed more than a hundred large and five hundred small cattle; and for these purposes the law required them to have a number of free men, who were to watch what was going on and to inform." * Niebuhr

* This passage of Appian is very obscure, but it has certainly been misunderstood by Niebuhr. The Latin version is "Decretum praeterea est, ut ad curanda opera rustica certum numerum

simply expresses the last enactment thus: "The possessors of the public land are obliged to employ free men as field labourers in a certain proportion to the extent of their possessions." Nothing is said as to any assignment of lands to the plebeians by the law of Stolo, though Niebuhr adds the following as one of the clauses of the law: "Whatever portions of the public land persons may at present possess above five hundred jugers, either in fields or plantations, shall be assigned to all the plebeians in lots of seven jugers as absolute property." He observes in a note: "No historian, it is true, speaks of this assignment, but it must have been made;" and then follow some reasons why it must have been made, part of which are good to show that it was not made. But though Livy does not speak of assignments of land as being made to the Plebes, such assignment is mentioned as one of the objects of his laws in the speech of Licinius (Livy, vi. 39) and of his opponent Appius Claudius (vi. 41).

About two hundred and thirty years after the passing of the Licinian law, the tribune Tiberius Sempronius Gracchus, who was of a plebeian but noble family, brought forward his Agrarian law, B.C. 133. The same complaints were still made as in the time of Licinius: there was general poverty, diminished population, and a great number of servile labourers. Accordingly he proposed that the Licinian law as to the five hundred jugera should be renewed or confirmed, which implies, not perhaps that the law had been repealed, but at least that it had fallen into disuse: but he proposed to allow a man to hold two hundred and fifty jugera, in addition to the five hundred, for each son that he had; though this must have been limited to two sons, as Niebuhr observes, inasmuch as one thousand jugera was the limit which a man was allowed to hold. The land that remained after this settlement was to be distributed by commissioners among the poor. His proposed law also contained a clause that the poor should not alienate their allotments. This Agrarian law only applied to the Roman public lands in Apulia, Samnium, and other parts of Italy, which were in large masses: it did not affect the public lands which had already been assigned to individuals in ownerships or sold. Nor did it comprise the land of Capua, which had been made public in the war against Hannibal, nor the Stellatis Ager: these fertile tracts were reserved as a valuable public property, and were not touched by any Agrarian law before that of C. Julius Cæsar.

The complaints of the possessors were loud against this proposed law; and to the effect which has already been stated. They alleged that it was unjust to disturb them in the possessions which they had so long enjoyed, and on which they had made great improvements. The policy of Gracchus was to encourage population by giving to the poor small allotments, which was indeed the object of such grants as far back as the time of the capture of Veii (Livy, v. 30): he wished to establish a body of small independent landholders. He urged on the possessors the equity of his proposed measure, and the policy of having the country filled with free labourers instead of slaves; and he showed them that they would be indemnified for what they should lose, by receiving, as compensation for their improvements, the ownership of five hundred jugera, and the half of that amount for those who had children. It seems doubtful if the law as finally carried gave any compensation to the persons who were turned out of their possessions, for such part of their possessions as they lost, or for the improvements on it. (Plutarch, *Tib. Gracchus*, x.) Three persons (triumviri) were appointed to ascertain what was public land, and to divide it according to the law: Tiberius had himself, his brother Caius, and his father-in-law Appius Claudius appointed to be commissioners, with full power to settle all suits which might arise out of this law. Tiberius Gracchus was murdered in a tumult excited by his opponents at the election

liberorum aleret quisque, qui ea quae agerentur inspicerent dominoque renunciarent." The word "domino" is an invention of the translator. The words τὰ γιγνόμενα may mean all "the produce," as in Thucydides (vi. 54); and this is a more probable interpretation than that given above.

when he was a second time a candidate for the tribuneship (B.C. 133). The law, however, was carried into effect after his death, for the party of the nobility prudently yielded to what they saw could not be resisted. But the difficulties of fully executing the law were great. The possessors of public land neglected to make a return of the lands which they occupied, upon which Fulvius Flaccus, Papirius Carbo, and Caius Gracchus, who were now the commissioners for carrying the law into effect, gave notice that they were ready to receive the statements of any informer; and numerous suits arose. All the private land which was near the boundary of the public land was subjected to a strict investigation as to its original sale and boundaries, though many of the owners could not produce their titles after such a lapse of time. The result of the admeasurement was often to dislodge a man from his well-stocked lands and remove him to a bare spot, from lands in cultivation to land in the rough, to a marsh or to a swamp; for the boundary of the public land after the several acquisitions by conquest had not been accurately ascertained, and the mode of permissive occupation had led to great confusion in boundaries. "The wrong done by the rich," says Appian, "though great, was difficult exactly to estimate; and this measure of Gracchus put everything into confusion, the possessors being moved and transferred from the grounds which they were occupying to others" (*Civil Wars*, i. 18). Such a general dislodgement of the possessors was a violent Revolution. Tiberius Gracchus had also proposed that so much of the inheritance of Attalus III., king of Pergamus, who had bequeathed his property to the Roman State, as consisted of money, should be distributed among those who received allotments of land, in order to supply them with the necessary capital for cultivating it. (Plutarch, *Tiberius Gracchus*, 14.) It is not stated by Plutarch that the measure was carried, though it probably was.

Caius Gracchus, who was tribune B.C. 123, renewed the Agrarian Law of his brother, which it appears had at least not been fully carried into effect; and he carried measures for the establishment of several colonies, which were to be composed of those citizens who were to receive grants of land. A variety of other measures, some of undoubted value, were passed in his tribunate; but they do not immediately concern the present inquiry. Caius got himself appointed to execute the measures which he carried. But the party of the nobility beat Caius at his own weapons; they offered the plebes more than he did. They procured the tribune Marcus Livius Drusus to propose measures which went far beyond those of Caius Gracchus. Livius accordingly proposed the establishment of twelve colonies, whereas Gracchus had only proposed two. (Plutarch, *Caius Gracchus*, 9.) The law of Gracchus also had required the poor to whom land was assigned to pay a rent to the treasury, which payment was either in the nature of a tax or an acknowledgment that the land still belonged to the state: Drusus relieved them from this payment. Drusus also was prudent enough not to give himself or his kinsmen any appointment under the law for founding the colonies. Such appointments were places of honour at least, and probably of profit too. The downfall of Caius was thus prepared, and, like his brother, he was murdered by the party of the nobility, B.C. 121, when he was a third time a candidate for the tribunate.

Soon after the death of Caius Gracchus, an enactment was passed which repealed that part of the law of the elder Gracchus which forbade those who received assignments of lands from selling them. (Appian, *Civil Wars*, i. 27.) The historian adds, which one might have conjectured without being told, that the rich immediately bought their lands of the poor; "or forced the poor out of their lands on the pretext that they had bought them;" which is not quite intelligible.* Another law, which Appian attributes to Spurius Borius, enacted that there should be no future grants of lands, that those who had lands should keep them, but pay a rent or tax to the Aerarium, and that this

* ταῖσδε ταῖς is probably corrupt.

money should be distributed among the poor. This measure then contained a poor-law, as we call it, or imposed a tax for their maintenance. This measure, observes Appian, was some relief to the poor by reason of the distribution of money, but it contributed nothing to the increase of population. The main object of Tiberius Gracchus, as already stated, was to encourage procreation by giving small allotments of land, a measure well calculated to effect that object. Appian adds:—"When the law of Gracchus had been in effect repealed by these devices, and it was a very good and excellent law, if it could have been carried into effect, another tribune not long after carried a law which repealed that relating to the payment of the tax or rent; and thus the plebes lost everything at once. In consequence of all this, there was still greater lack than before of citizens, soldiers, income from the (public) land, and distributions."

Various Agrarian laws were passed between the time of the Gracchi and the outbreak of the Marsic war, B.C. 90, of which the law of Spurius Thorius (lex Thoria) is assigned by Rudorff to the year of the city 643, or B.C. 111; and this appears to be the third of the laws to which Appian alludes as passed shortly after the death of Caius Gracchus. Cicero also (*Brutus*, 36) alludes to the law of Thorius as a bad measure, which relieved the public land of the tax (vectigal). The subject of this lex was the public land in Italy south of the rivers Rubico and Macra, or all Italy except Cisalpine Gaul; the public land in the Roman province of Africa, from which country the Romans derived a large supply of grain; the public land in the territory of Corinth; and probably other public land also, for the bronze tablet on which this law is preserved is merely a fragment, and the Agrarian laws of the seventh century of the city appear to have related to all the provinces of the Roman state. One tract, however, was excepted from the Thoria lex, the ager Campanus, or fertile territory of Capua, which had been declared public land during the war with Hannibal, and which neither the Gracchi nor any other politician, not even Lucius Sulla, ventured to touch: this land was reserved for a bolder hand. The provisions of the Thoria lex are examined by Rudorff in an elaborate essay.

In the year B.C. 91 the tribune Marcus Livius Drusus the younger, the son of the Drusus who had opposed Caius Gracchus, endeavoured to gain the favour of the plebes by the proposal of laws to the same purport as those of the Gracchi, and the favour of the Socii, or Italian allies, by proposing to give them the full rights of Roman citizens. "His own words," says Florus (iii. 17), "are extant, in which he declared that he had left nothing for any one else to give, unless a man should choose to divide the mud or the skies." Drusus agitated at the instigation of the nobles, who wished to depress the equestrian body, which had become powerful; but his Agrarian profusion, which was intended to gain the favour of the plebes, affected the interests of the Socii, who occupied public land in various parts of Italy, and accordingly they were to be bought over by the grant of the Roman citizenship. Drusus lost his life in the troubles that followed the passing of his Agrarian law, and the Socii, whose hopes of the citizenship were balked, broke out in that dangerous insurrection called the Marsic or Social War, which threatened Rome with destruction, and the danger of which was only averted by conceding, by a Lex Julia, what the allies demanded (B.C. 90). The laws of Drusus were declared void, after his death, for some informality.

The proposed Agrarian law of the tribune P. Servilius Rullus, in B.C. 63, the year of Cicero's consulship, was the most sweeping Agrarian law ever proposed at Rome. Rullus proposed to appoint ten persons with power to sell everything that belonged to the state, both in Italy and out of Italy, the domains of the kings of Macedonia and Pergamus, lands in Asia, Egypt, the province of Africa, in a word everything; even the territory of Capua was included. The territory of Capua was at that time occupied and cultivated by Roman plebeians (colitur et possidetur), an industrious class of good husbandmen and good soldiers: the pro-

posed measure of Rullus would have turned them all out; there was not here, says Cicero (ii. 30), the pretext that the public lands were lying waste and unproductive; they were in fact occupied profitably by the possessors, and profitably to the state, which derived a revenue from the rents. The ten persons (decemviri) were to have full power for five years to sell all that belonged to the State, and to decide without appeal on all cases in which the title of private land should be called in question. With the money thus raised it was proposed to buy lands in Italy on which the poor were to be settled, and the decemviri were to be empowered to found colonies where they pleased. This extravagant proposal was defeated by Cicero, to whose three orations against Rullus we owe our information about this measure.

In the year B.C. 60 the tribune Flavius brought forward an Agrarian law, at the instigation of Pompey, who had just returned from Asia, and wished to distribute lands among his soldiers. Cicero, in a letter to Atticus (i. 19), speaks at some length of this measure, to which he was not entirely opposed, but he proposed to limit it in such a way as to prevent many persons from being disturbed in their property, who, without such precaution, would have been exposed to vexatious inquiries and loss. He says, "One part of the law I made no opposition to, which was this, that land should be bought with the money to arise for the next five years from the new sources of revenue (acquired by Pompey's conquest of Asia). The senate opposed the whole of this Agrarian measure from suspicion that the object was to give Pompey some additional power, for he had shown a great eagerness for the passing of the law. I proposed to confirm all private persons in their possessions; and this I did without offending those who were to be benefited by the law; and I satisfied the people and Pompey, for I wished to do that too, by supporting the measure for buying lands. This measure, if properly carried into effect, seemed to me well adapted to clear the city of the dregs of the populace, and to people the wastes of Italy." A disturbance in Gallia Cisalpina stopped this measure; but it was reproduced, as amended by Cicero, by C. Julius Cæsar, who was consul in the following year, B.C. 59. The measure was opposed by the senate, on which Cæsar went further than he at first intended, and included the Stellatis Ager and Campanian land in his law. This fertile tract was distributed among twenty thousand citizens who had the qualification which the law required, of three children or more. Cicero observes (*Ad Attic.* ii. 16), "That after the distribution of the Campanian lands and the abolition of the customs' duties (portoria), there was no revenue left that the State could raise in Italy, except the twentieth which came from the sale and manumission of slaves." After the death of Julius Cæsar, his great nephew Octavianus, at his own cost and without any authority, raised an army from these settlers at Capua and the neighbouring colonies of Casilinum and Calatia, which enabled him to exact from the senate a confirmation of this illegal proceeding, and a commission to prosecute the war against Marcus Antonius. Those who had received lands by the law of the uncle supported the nephew in his ambitious designs, and thus the settlement of the Campanian territory prepared the way for the final abolition of the republic. (Compare Dion. Cassius, xxxviii. 1—7, and xlv. 12.)

The character of the Roman Agrarian laws may be collected from this sketch. They had two objects: one was to limit the amount of Public land which an individual could enjoy; the other was to distribute public land from time to time among the plebes and veteran soldiers. A recent writer, the author of a useful work (Dureau de la Malle, *Economie Politique des Romains*), affirms that the Licinian laws limited private property to five hundred jugera; and he affirms that the law of Tiberius Gracchus was a restoration of the Licinian law in this respect (ii. 280, 282). On this mistake he builds a theory, that the law of Licinius and of Tiberius Gracchus had for their "object to maintain equality of fortunes and to create the legal right of all to attain to office, which is the fundamental basis of democratic government."

His examination of this part of the subject is too superficial to require a formal confutation, which would be out of place here. But another writer already quoted (Rudorff, *Zeitschrift für Geschichtliche Rechtswissenschaft*, x. 28) seems to think also that the Licinian maximum of five hundred jugera applied to private land, and that this maximum of five hundred jugera was applied by Tiberius Gracchus to the Public land. Livy (vi. 35), in speaking of the law of Licinius Stolo, says merely "Nequis plus quingenta jugera agri possideret," but, as Niebuhr observes, the word "possideret" shows the nature of the land without the addition of the word Public. And if any one doubts the meaning of Livy, he may satisfy himself what it is by a comparison of the following passages (ii. 41; vi. 4, 5, 14, 16, 36, 37, 39, 41). The evidence derived from other sources confirms this interpretation of Livy's meaning. That the law of Gracchus merely limited the amount of Public land which a man might occupy, is, so far as we know, now admitted by everybody except Dureau de la Malle; but a passage in Cicero (*Against Rullus*, ii. 5), which he has referred to himself in giving an account of the proposed law of Rullus, is decisive of Cicero's opinion on the matter; not that Cicero's opinion is necessary to show that the laws of Gracchus only affected Public land, but his authority has great weight with some people.

It is however true, as Dureau de la Malle asserts, that the Licinian laws about land were classed among the Sumptuary laws by the Romans. The law of Licinius, though not directly, did in effect limit the amount of capital which an individual could apply to agriculture and the feeding of cattle, and jealousy of the rich was one motive for this enactment. It also imposed on the occupier of public land a number of free men: if they were free labourers, as Niebuhr supposes, we presume that the law fixed their wages. But their business was to act as spies and informers in case of any violation of the law. This is clear from the passage of Appian above referred to, the literal meaning of which is what has been here stated, and there is no authority for giving any other interpretation to it.* The law of Tiberius Gracchus forbade the poor who received assignments of land from selling them; a measure evidently framed in accordance with the general character of the enactments of Licinius and Gracchus. The subsequent repeal of this measure is considered by most writers as a device of the nobility to extend their property; but it was a measure as much for the benefit of the owner of an allotment. To give a man a piece of land and forbid him to sell it, would often be a worthless present. The laws of Licinius and Gracchus, then, though they did not forbid the acquisition of private property, prevented any man from employing capital on the public land beyond a certain limit; and as this land formed a large part of land available for cultivation, its direct tendency must have been to discourage agriculture and accumulation of capital. The law of Licinius is generally viewed by modern writers on Roman history as a wise measure; but it will not be so viewed by any man who has sound views of public economy; nor will such a person seek, with Niebuhr, to palliate by certain unintelligible assumptions and statements the iniquity of another of his laws, which deprived the creditor of so much of his principal money as he had already received in the shape of interest. The law by which he gave the plebeians admission to the consulate was in itself a wise measure. Livy's view of all these measures may not be true, but it is at least in accordance with all the facts, and a much better comment on them than any of Livy's modern critics have made. The rich plebeians wished to have the consulate opened to them: the poor cared nothing about the consulate, but they wished to be relieved from debt, they wished to humble the rich, and they wished to have a share of the booty which would arise

* The precise meaning of this passage of Appian is uncertain. If the words τὰ γιγνόμενα refer to the produce, their duty was to make a proper return for the purpose of taxation, that is, of the tenths and fifths. But this passage requires further consideration. All that can be safely said at present is that Niebuhr's explanation is not warranted by the words of Appian.

from the law as to the 500 jugera. They would have consented to the law about the land and the debt, without the law about the consulate; but the tribunes told them that they were not to have all the profit of these measures; they must allow the proposers of them to have something, and that was the consulate: they must take all or none. And accordingly they took all.

The other main object of the Agrarian laws of Rome was the distribution of public land among the poor in allotments, probably seldom exceeding seven jugera, about five English acres, and often less. Sometimes allotments of twelve jugera are spoken of. (Cicero against Rullus, ii. 31.) The object of Tiberius Gracchus in this part of his legislation is clearly expressed; it was to encourage men to marry and to procreate children, and to supply the state with soldiers. To a Roman of that age, the regular supply of the army with good soldiers would seem a sound measure of policy; and the furnishing the poorer citizens with inducement enough to procreate children was therefore the duty of a wise legislator. There is no evidence to show what was the effect on agriculture of these allotments; but the ordinary results would be, if the lands were well cultivated, that there might be enough raised for the consumption of a small family; but there would be little surplus for sale or the general supply. These allotments might, however, completely fulfil the purpose of the legislators. War, not peace, was the condition of the Roman state, and the regular demand for soldiers which the war would create, would act precisely like the regular emigration of the young men in some of the New England States: the wars would give employment to the young males, and the constant drain thus caused would be a constant stimulus to procreation. Thus a country from which there is a steady emigration of males never fails to keep up and even to increase its numbers. What would be done with the young females who would be called into existence under this system, it is not easy to conjecture; and in the absence of all evidence, we must be content to remain in ignorance. It is not stated how these settlers obtained the necessary capital for stocking their farms; but we read in Livy, in a passage already quoted, that on one occasion the plebes were indifferent about the grants of lands, because they had not the means of stocking them; and in another instance we read that the treasure of the last Attalus of Pergamus was to be divided among the poor who had received grants of lands. A gift of a piece of land to a man who has nothing except his labour, would in many cases be a poor present; and to a man not accustomed to agricultural labour—to the dregs of Rome, of whom Cicero speaks, it would be utterly worthless. There is no possible way of explaining this matter about capital, except by supposing that money was borrowed on the security of the lands assigned, and this will furnish one solution of the difficulties as to the origin of the plebeian debt. It is impossible that citizens who had spent most of their time in Rome, or that broken-down soldiers should ever become good agriculturists. What would be the effect even in the United States, if the general government should parcel out large tracts of the public lands, in allotments varying from two to five acres, among the population of New York and Philadelphia, and invite at the same time all the old soldiers in Europe to participate in the gift? The readiness with which the settlers in Campania followed the standard of young Octavianus shows that they were not very strongly attached to their new settlements.

The full examination of this subject, which ought to be examined in connexion with the Roman law of debtor and creditor, and the various enactments for the distribution of grain among the people of Rome, would require an ample volume. The subject is full of interest, for it forms an important part of the history of the Republic from the time of the legislation of Licinius; and it adds one to the many lessons on record of useless and mischievous legislation. It is true that we must make some distinction between the laws of Licinius and the Gracchi, and such as those proposed by Rullus and Flavius: but all these legis-

lative measures had the vice either of interfering with things that a state should not interfere with, or the folly of trying to remedy by partial measures those evils which grew out of the organization of the state and the nature of the social system.

The subject of the Roman revenue derived from the Public Land has not been discussed here. This belongs to LAND-TAX, REVENUE, and TAXATION.

The nature of the Agrarian laws, particularly those of Licinius and the Gracchi, has often been misunderstood in modern times; but it is a mistake to suppose that all scholars were equally in error as to this subject. The statement of Freinsheim, in his Supplement to Livy, of the nature of the legislation of the Gracchi, is clear and exact. But Heyne (*Opuscula*, iv. 351) had the merit of putting the matter in a clear light at a time, during the violence of the French revolution, when the nature of the Agrarian laws of Rome was generally misunderstood. Niebuhr, in his Roman History, gave the subject a more complete examination, though he has not escaped error, and his economical views are sometimes absurd. Savigny (*Das Recht des Besitzes*, p. 172, 5th ed.) also has greatly contributed to elucidate the nature of possession of the public land, though the main object of his admirable treatise is the Roman law of possession as relates to private property.

AGRICULTURE (from the Latin *Agricultura*). The economical relation of agriculture to other branches of industry is the subject of the following remarks.

The question has sometimes been propounded whether agriculture or manufactures are more useful to a state, or, in other words, whether agriculture or other branches of industry contribute most to the wealth of a state; and whether a state should give more encouragement to agriculture or manufactures. Such questions imply that there is something which essentially distinguishes manufactures from agriculture; and also that a state can and ought to give a direction to industry. Agriculture is the raising of vegetable products from the soil, which are either consumed in their raw state or used as materials on which labour is employed in order to fashion them to some useful purpose. Manufactures, in the ordinary sense of the term, comprise the various modes of working up the raw products of agriculture and mining. So far there is a distinction between agriculture and manufactures; agriculture is auxiliary and necessary to the other. In the popular notion, the difference in these two processes, the raising of a product from the ground and the working up of the product into another form, constitutes an essential difference between these two branches of industry; and accordingly agriculture and manufactures are often spoken of as two things that stand in opposition or contrast, and they are often viewed as standing in a hostile opposition to one another. But such a distinction between agriculture and manufactures has no real foundation. Those agricultural products which are articles of food—as bread, the chief of all—are essentials, and the industry of every country is directed to obtaining an adequate supply of such articles, either from the produce of such country or by foreign trade. Some of the various kinds of grain which are used as food are the prime and daily articles of demand in all countries. Agricultural articles which are employed as materials out of which other articles are made, such as cotton, are only in demand in those countries where they can be worked up into a new and profitable form. The varieties of soil and climate render some parts of the world more fit to produce grain, and others more suitable for cotton. Ever since the earliest records of history the people of one country have exchanged their products for the products of other countries; and if the matter were simply left to the wants and wishes of the great majority of mankind, no one would trouble himself with the question of the relative superiority of the process by which he produces grain or cotton, and the art by which his cotton is turned into an article of dress in some other country, and sent back to him in that new form to be exchanged for grain or more raw cotton. He might not perceive any essential difference in the process of turning

the earth, committing the seed to it, and reaping the crop at maturity; and the process by which the raw material which he has produced, such as flax or cotton, is submitted to a variety of operations, the whole of which consist only in giving new forms to the material or combining it with other materials. In both cases man moves or causes motion; he changes the relative places of the particles of matter, and that is all. He creates nothing; he only fashions anew. The amount of his manual labour may be greatly reduced by mechanical contrivances, and much more in what are called manufactures than in what is termed agriculture; so that if the amount of the direct labour of hand is to be the measure of the nature of the thing produced, agricultural products are more manufactures than manufactured articles are. Some branches of agriculture, such as wine-making, indeed belong as much to manufactures, in the ordinary sense of that term, as they belong to agriculture. The cultivation of the vine is an essential part of the process of wine-making: but the making of the wine is equally essential. Indeed there are few agricultural products which receive their complete value from what is termed agriculture. Corn must be carried to the market, it must be turned into flour, and the flour must be made into bread, before the corn is in that shape in which it is really useful. Agriculture therefore only does a part towards the process of making bread, though the making of bread is the end for which corn is raised. It is true that in agricultural countries the processes by which many raw products are fashioned to their ultimate purpose, are often carried on by agriculturists and on the land on which the products are raised. But agriculture, as such, only produces the raw matter, corn, flax, grapes, sugar-cane, or cotton. If any agriculturist makes flour, linen, wine, sugar, or cotton-cloth, he does it because he cannot otherwise produce a saleable commodity; but the making of flour or wine or cloth is a manufacturing operation, as the word manufacture is understood.

Besides the manufacture of agricultural products, there is the manufacture of the products of mines. A mine cannot be classed altogether either with manufactures or agriculture, as these terms are vulgarly understood. Mining produces raw products, which have no value till they are subjected to the various processes by which an infinite variety of useful articles are made out of them. So far mining bears the same relation to certain branches of industry that agriculture does to other branches of industry which it supplies with raw materials. Fisheries produce a supply of food, and are therefore precisely like those branches of agriculture which are directed solely to the production of food.

Now if the question be, which of all these branches of industry adds most to wealth, or, in other words, is most useful to mankind, the answer must be,—they are all equally useful. If it be urged, that some are of more intimate necessity than others, inasmuch as food is essential and therefore its production is the chief branch of industry, it may be replied, that in the present condition of man it is not possible to assert that one branch of industry is more useful than another; each depends on every other. Further, if food is essential to all men in all countries, clothing and houses are equally essential even to the support of life in most countries; and the production of clothing and the building and furnishing of convenient houses comprehend almost every branch of manufacturing industry which now exists. It is an idle question to discuss the relative value of any branches of industry, when we found the comparison upon a classification of them which rests on no real difference, and leave out of the question their aptitude to minister to our wants. One might discuss the relative value of the manufacture of scents and perfumes, and the manufacture of wine and beer; and the foundation of the comparison of value might be the number of persons who use or wish to use the two things, and the effect which the consumption of scents and perfumes on the one hand, and of wine and beer on the other, will have on the consumers and the condition of those who produce them.

But though it is an idle question to discuss the relative value of the variety

of processes included in the term agriculture, and of the infinite variety of processes included in the term manufactures, it is not an idle labour, if we can show that such a discussion is worthless and can lead to no valuable results. It is not an idle labour to attempt to dissipate an error which affects the commercial policy of most nations, and is a deeply rooted error in the minds of the ill instructed, both rich and poor. It was the opinion of a set of persons who have been called the Economistes, that agriculture was the source of all wealth, and therefore the most important branch of industry. This doctrine was founded on the assumption that all the materials that we use are ultimately derived from the earth. This, however, is not true: the products of the sea, of hunting, of mining, are not due to agriculture, even in the sense in which the advocates of this theory understood the term agriculture: and further, a large part of agricultural products receive most of their value from other labour besides agricultural labour. Even corn, the material of bread, as already observed, must undergo a manufacturing process before it becomes bread. But the greatest part of the corn that is produced has little value in the place where it is produced: it obtains its value by being transported to another place where it is wanted, and at a cost which forms a considerable part of its selling price. Lastly, the corn is of no value even when it has thus been removed from one place to another, unless it has been removed to a place where it is wanted by those who are not raising corn, but are producing something to give in exchange for it. The value, then, of the corn depends ultimately on the labour and the wants of those who do not concern themselves about its production.

If those who possess political power were free from all prejudices and all motives of self-interest, or what they suppose to be their interest, there would neither be encouragement nor discouragement given to any branch of industry, and least of all to agriculture. If taxes must be raised, they would be raised in such way as would least interfere with the free exercise of all branches of industry. The State would provide for defence against foreign aggression, for the administration of justice, and for all such matters of public interest as require its direction and superintendence. To ascertain what these matters may be and how they are to be done, belongs to the subject of government; and the sphere to which the State should limit its activity cannot be exactly defined. But there is one principle which excludes its interference from many matters; which is this. If men are not interfered with they will employ their labour and capital in the way which is most profitable to themselves; and each man knows better how he can employ himself profitably than anybody else can, or any government can, whether such government is of one or many. Agriculture is no exception to this general principle; and there is no reason of public interest why a government should either encourage it or discourage it. In order that the agriculture of a country may attain its utmost development, it is necessary that it be free from all restraint, and that it also be free from the equally injurious influence of special favour or protection.

But no governments have ever let things alone which they ought not to have meddled with; and agriculture has been subject perhaps to more restrictions than any other branch of industry. The interference with agricultural industry lies deeper than at first sight appears. Land is an essential element of a state: it is the basis on which the structure is raised. Now the political constitution of every country is intimately connected with the nature of the landed property; and if we would really trace the history of any nation from the earliest records to the present time, we must begin with the fundamental notions of the law of property in land. In this country for instance it is easily shown that the present mode in which land is held and occupied is the result of those feudal principles which were established, or confirmed and extended by the Norman conquest of England. The various modes in which land is held by the owner and occupied by the cultivator, the modes in which it may be alienated or transmitted by will or by

descent, the burdens to which it is liable either on any change of owner or in any other way, are all important elements in estimating the degree of freedom which agriculture enjoys. The political constitution of a country also materially determines whether the land shall be cultivated in large or in small portions, whether owned by a numerous body or owned by a few; there may also be positive laws which affect the power of acquiring land or disposing of it; and these circumstances materially affect the freedom of agriculture and its condition. The political constitutions of countries, so far as we know them, have not been the result of design. We of the present generation find something transmitted to us which our predecessors have been labouring to amend or deteriorate; they in like manner received it from their predecessors; but the beginning of the series we cannot ascend to. Still every existing generation can do something towards altering that which has been transmitted to it; and every act of legislation which interferes with the mode in which land is acquired or enjoyed materially affects the condition of agriculture. No sufficient reason has ever yet been shown why a man should not, as a general rule, acquire as much land as he can, and dispose of it as he pleases either during his lifetime or at his death. Without discussing the question, whether a man ought to be permitted to give his land to the church or a corporate body, or to determine for generations to come what persons or class of persons shall enjoy his land, it may be laid down as a safe rule that there are limits within which a man's power over his property in land ought to be circumscribed. But such limits should not in any way limit the productive use that can be made of the land; the object of fixing such limits, whatever they may be, is to prevent any large amount of land from being withdrawn permanently out of the market. In a rich country, where great fortunes are acquired by commerce and manufacturing industry, there are always men who wish to invest money in land, and it is for the public interest that there should be opportunities of making such investments.

The tenure of land in any country may be unfavourable to the improvement of its agriculture. If the object is to encourage agriculture in the only way in which a State can profitably encourage it, all restrictions that arise from the peculiar tenure of land should be removed. But the mode in which land is held may have a political character, and this may be an obstacle to the giving to agriculture that freedom which is necessary for its improvement. It might be considered that in this country it would be politically useful to forbid those large accumulations of land in the hands of individuals, a condition which is accompanied with a diminution in the number of small landowners. But if it were wise in some points of view to enact a law that should limit the quantity of land that a man may hold, it would be very unwise in other points of view; and such a law would also easily be evaded. The Agrarian laws of Rome only applied to the Public Land, but among other matters they limited the amount of such land that a man could occupy and use. These laws were continually evaded. But besides this, an injury was done to agriculture, that is, the amount of useful produce was diminished by preventing large capitalists from occupying as much of the land as they pleased, subject to the rent which was due to the State. The specious object of the Agrarian laws was to give small cultivators the use or ownership of a portion of the public land, and thus to rear up a body of independent free agriculturists; for the larger farms were cultivated by slaves. Though these laws were not an interference with private property, as the term is properly understood, they interfered with the profitable employment of capital; and they failed in accomplishing their professed object. Some instances are given under the article Allotments of the gradual decrease of small farms in England and their consolidation into large farms, a process which will certainly take place in all countries where there is no positive obstacle, whenever capital is become abundant. [AGRARIAN LAWS.]

The political constitution of a State may therefore encourage or discourage agriculture; and laws may be from time to time enacted which shall have the same

effect. Such laws have sometimes an object purely political, that is to say, a law may be passed which shall have a direct object, not agricultural, and yet it shall indirectly affect agriculture. Any institution or law which in any way either prevents large masses of land from being owned or cultivated by individuals, or which results in a great subdivision of land among owners and occupiers, has an indirect effect on agriculture. Those who cultivate on a small scale cannot enter into the market in competition with those who cultivate on a large scale. [ALLOTMENTS.] A State which consists solely of small landowners must be a feeble political body, and the amount of surplus produce which can be raised will be small. Such a community, if it has not the resources of foreign commerce, will in seasons of scarcity run the risk of famine. The most profitable size of farms depends on a variety of considerations, but whatever it may be, the profitable measure will be practically determined in a country where land can be freely bought or hired, and where capital and labour are abundant. In such a country, and where there is a considerable extent and variety of surface, it is probable that circumstances will produce farms of every size from the smallest unprofitable holdings to the largest farms which can be managed with profit.

Where land is hired by the cultivator, it is an essential condition to good agriculture that there should be farms to hire which permit and require the employment of large capitals. It is also necessary that he who hires the land shall be able to secure the use of it for a period long enough to induce him to cultivate it in the best way, and to make those improvements the fruit of which cannot be reaped all at once. It is a last and equally important condition that he should not be restrained in his mode of cultivation. Small farms, short leases, and conditions which prescribe or limit the mode of cultivation, will infallibly produce bad agriculture.

The productive power of agriculture is not free in any country when the agriculturist is fettered by restrictions upon the sale of his produce; whether the restrictions are imposed by his own State and exclude him from selling his produce where he can, or whether they are imposed by another State which refuses to receive his surplus produce. In neither case will agriculture attain the development of which it is capable. In France the free intercourse between the different provinces of the kingdom was once impeded by many restrictions, and corn could not be taken even from one province to another. The consequence was that agriculture was in a wretched condition, but it improved rapidly when the restrictions were removed. The history of all countries shows that the interference with the power of disposing of agricultural produce has been unfavourable to agriculture, and consequently injurious to the whole community. Nor is the agriculture of a country free when the land or its products are subject to heavy taxes, direct or indirect. Such taxes raise the price of agricultural produce, and so far diminish the power of persons to buy it; they also increase the amount of capital requisite for cultivating a piece of land, for the payment of the taxes is not always made to depend on the amount of produce raised, or on the time when the produce is by sale converted into money. Payments the amount of which depends on the amount of produce, may either be in the nature of rent, that is, the amount which a cultivator agrees to give to the owner of the land for the use of it: or they may be payments which the land owes to some person or persons not the owner or owners, and quite independent of the payment due to the landowner; to this second class of payments belong Tithes. The cultivator of the Roman Public Land paid the State a tenth of the produce of arable land, and a fifth of the produce of land planted with productive trees. But even this mode of payment is an obstacle to improvement, for the occupier must lay out capital in order to increase the produce of the land;, and it will often happen that he pays the tenth of the produce before he has got back his capital, and long before the outlay brings him a profit. The money payment which a man makes to the owner of land for the use of it, is the value of the produce which

remains after all expenses of cultivation, and all costs and charges incident to the cultivation are paid, and the average rate of profit also are returned to the cultivator: at least this is the general mode in which the amount of rent under ordinary circumstances will be determined. It may therefore be as low as nothing. How high it may be depends on various circumstances. [RENT.]

If the agriculture of a country is free from all restrictions, it may in a given time reach the limit of its productive powers. In a country which has a considerable extent of surface and variety of soil, this limit may not be reached for many centuries, because improvement in agriculture is slower than in almost every other branch of industry. The best lands will be first occupied, and carelessly cultivated, as in America; the inferior lands will in course of time be resorted to, and finally the results of modern science will be applied to improve the methods of cultivation. An agricultural country, or a country which produces only raw products, and has no manufactures, will have reached the limit of its productive powers when it has raised from the soil all that can be profitably raised. Whether it will have a large surplus of agricultural produce to dispose of or not, will in a great degree depend on the size of the farms; but in either case the country will have attained the limit of its productive powers under the actual circumstances in which the agriculture is carried on.

But a country which also abounds in manufacturing industry may continue to extend its productive powers far beyond the limits of its agricultural produce. Part of the agricultural produce will be food, but when the producible amount of food has reached its limit, the productive power of manufactures has not reached its limit also; and this makes a real distinction between agriculture and manufactures. Great Britain, for instance, might not be able to raise more food than is sufficient for its actual population, but Great Britain could supply the world with cotton-cloth and hardware. A country of any considerable extent with a fair proportion of good soil will always be to a considerable extent an agricultural country, for, under equal circumstances of taxation with other countries, it will always be as profitable to cultivate the good lands of such country as to import foreign grain, the price of which is increased by the cost of carriage and contingent expenses. But a time will come in all countries which contain a large population not employed in agriculture, when foreign grain can be imported and sold at a lower price than grain can be produced on poor soils; and if there is no restriction placed on the importation of grain, experience will soon show when it is more profitable to buy what is wanted to supply the deficiency of the home produce than to attempt to raise the whole that is wanted by cultivating poor soils. No country of large extent with a great population could obtain the whole supply of corn by foreign commerce; such an instance is not on record. But a manufacturing country which has up to a certain point produced all the food that is required for its population, will be stopped short in the development of its manufacturing power if from any cause whatever it cannot obtain an increased supply of food. An increased supply of food and an increased supply of raw produce are the two essential conditions, without which the manufacturing industry of a country is ultimately limited by its power to produce food. If the increased supply of food can be obtained from foreign countries, it is a matter of indifference to all who consume the food where it comes from; and the agriculturist himself, as far as he is a consumer of food, is benefited with the rest of the community by the greater abundance of food caused by the foreign supply and by the increased productive powers of the manufacturer. It is not necessary to determine how the increased supply of food will operate on wages or on profits, or on both: it is enough to show, that a time must come when there can be no increase in manufacturing power, if the supply of food is limited to what the country produces; and by an addition to the supply of food an additional power is given towards the production of those articles which have reached their limit because the supply of food cannot be increased.

A country which has already produced from its best and its second-rate soils as much as these soils can produce in the actual state of Agriculture, will begin to import grain from other countries, if there are no restrictions on importation. For capital will be more profitably employed in buying and importing foreign corn from countries where it is abundant than in raising it at great cost from inferior soils at home. It is generally assumed that the country which exports grain will take manufactured articles in exchange, and if there are no restrictions on either side this must be the case; for the manufacturing country does not want the grain more than the agricultural country wants the manufactures. But it might happen that a country which had a very large internal and foreign trade would find it much cheaper to buy annually from grain-growing countries all the corn that is wanted to supply its deficient produce at home, than to attempt to supply the deficiency, or to add to the present stock of food by cultivating very poor soils; and this, even if the grain-growing country should refuse to take a single article of manufactures. The only way, indeed, of actually testing the truth of such a case as this is by experiment; but if commerce were free from all restraint, the importation of grain would become a steady trade, the amount of which would be regulated by the condition of Agriculture in the importing country. If the importing country had brought all the better soils into cultivation, the amount of foreign grain that could profitably be introduced would depend on the productive powers of the exporting country and of the cost of transport. Any improvement in the Agriculture and internal communications of the importing country would tend to check importation: increase of population would tend to increase it. The limit of profitable corn cultivation in the importing country, under its actual circumstances, would be determined by the cost of production in the exporting country, and the cost of transport. The Agriculture of the importing country and of the exporting country would then both be free, so far as restrictions on their commerce are concerned, and the consequence of this competition must be favourable to agriculture in both. The profits of the agriculturists in both countries would be always the same or nearly the same as the average rate of all profits in the two several countries; and the profits of the agriculturist of the importing country would not be affected by the profits of the agriculturist of the exporting country, any more than the profits of any other class of persons would be affected.

The free development then of Agriculture in a country requires the admission of foreign grain. If foreign grain is absolutely excluded, land is made to produce grain which would be better employed in some other way, as in pasturage or planting. Corn thus becomes dear; and agriculture is encouraged or protected, as it is termed, to the injury of the mass of the people, and to its own injury also, for experience shows that those branches of industry receive most improvements which are neither restrained nor encouraged; in other words, industry to be most productive to a nation must have no other direction than what the hope of profit will make individuals give it. If foreign grain is not excluded, but admitted on paying certain dues, the evil is much less than in the case of absolute exclusion, provided the duties are not high, and provided they are uniform. For nothing except a uniform duty can regulate the foreign trade and give it that steadiness which is most particularly the interest of the agriculturist. A uniform duty is equivalent, so far as concerns the foreign trade, to an addition to the productive powers of the soil of the importing country. If trade is free, the exporting country can send its grain whenever the cost of production and the cost of transport do not raise the cost price of such grain above that of the grain raised in the importing country. A miraculous addition to the productive powers of the soil of the importing country or a sudden improvement in its agriculture, without any corresponding change in the exporting country, would at once lower the selling price of grain in the importing country, and diminish the supply from the exporting country. The effect is just the same as

to the supply from the foreign country, if a duty is laid on foreign grain; for that duty will, in certain stages of the agriculture of both countries, just make the difference that prevents the foreign grain from being sold in the importing country at the same price as the native grain. In such case the foreign grain cannot enter the country till the price of the native grain has risen by an amount equal to such fixed duty: the mode in which this rise operates is considered in a subsequent part of this article. But there is this important difference between the supposed cases of miraculous addition to the fertility of the soil or a sudden improvement in agriculture, and the case of a fixed duty, that in either of the first two cases the country has an increased supply of grain, in the other it has not. However, a fixed duty has the advantage of determining the precise terms on which foreign and native corn shall enter into competition; and if the duty is moderate, and is considered necessary for the purposes of revenue, some people argue that a country is not ill administered in which such a duty is raised, though, if it is a manufacturing country rich in capital, such a necessary tax is an obstacle to the full development of its manufacturing powers.

If the duty is variable, the trade cannot be steady, and consequently the price of corn will vary to every degree within very wide limits; an assertion which is not a conjecture, but a fact ascertained by experience. [CORN TRADE.] If there is a duty, either variable or fixed, it gives to poor soils a value which they would not have if the trade in corn were free; for the demand for food calls poor soils into cultivation, and the price of food is regulated by the cost of producing food on the poor lands, and food is consequently dear. The cost of producing food on the rich lands is less, either owing to their superiority, fertility, or the less labour and manure that they require, or owing to both causes. This superiority of rich lands over poor lands gives to them an increased value either as objects of sale or objects of hire: the selling price of such lands is raised, and the letting price is raised; and other lands also acquire a value that they would not otherwise have.

In a rich country it matters little if a capitalist who wishes to have land gives for it more than its value: such must be the result of the competition for land when the amount is limited and the desire and the power to purchase are constantly increasing. But the effect of a tax on foreign grain in a manufacturing country, when all the best soils are under cultivation, is directly to increase the value of land and to add to the income of the landholder by making land capable of profitable production and of bearing a rent, which without the tax could not be profitably cultivated or give a rent to the owner. The price at which the cultivator must sell his grain in order to continue to cultivate includes his profit and the owner's rent; and the price is paid by him who consumes the grain.

It remains to consider the effect of taxation on the exporting and importing countries. If both are free from taxation, or if the taxation is equal in both, or nearly equal, no nation is well administered which does not allow the importation of grain to be as free as is consistent with raising the necessary amount of revenue. It is not, however, hereby admitted that a tax on the importation of foreign grain is like any other tax, for such a tax is doubly injurious; first in raising the price of food, secondly in impeding the full development of all branches of industry, agriculture included. But if the exporting and importing countries are unequally taxed, it might be said that the agriculturists cannot enter into fair competition, if we suppose their facilities for production are the same; for if the importing country is more highly taxed, the cost of producing grain is thereby increased, and the exporting country has an advantage over the importing country to the amount of the difference in taxation in the two countries. But agriculture is not the only branch of industry that is taxed in a highly taxed country: all other branches of industry are also highly taxed. There is nearly always a duty on all raw produce that is introduced into it for the purpose of supplying the manufactures, as

well as a duty on grain; other taxes also affect directly and indirectly the cost of other manufactured articles. Now as taxes must by the supposition be raised in such a country, the question is in what manner can they be raised with least injury to the general productive power of the nation? If a heavy tax is laid on any raw produce which is required in the country, whether it be corn which is required for bread, or cotton, or other raw articles which are required to supply the manufactories, the productive industry of the country will be checked. If a manufacturing country is in such a condition that it does import foreign grain to some amount, notwithstanding heavy duties upon it, this is a sure indication that the importing country, in the present condition of its agriculture, has passed the limit of production which is profitable to the community. In like manner, if foreign manufactured articles of the same kind with those manufactured in this country should be imported to a considerable amount, notwithstanding the payment of heavy duties, it would at least be a clear indication that these branches of domestic industry could not supply the demand; and it might be that such branches of industry were wholly unprofitable to the community.

The operation of a tax on articles imported into a country seems to be this. The articles may either be articles of a kind which are not produced in the importing country, or which are produced there. If a tax or duty is laid upon articles not produced in the importing country, the direct effect is to raise the price of such articles and to diminish the consumption of them. The indirect effect is to diminish the demand of the exporting country for the goods which it receives from the importing country. If a tax or duty is laid upon articles imported from abroad, which are also produced in the importing country, the effect is to raise the price of all such articles, both those imported and those produced at home; and in this manner:—The producer does not immediately supply the public. Between the producer and the buyer there are the wholesale dealer and the retail dealer. The wholesale dealer regulates his purchases by the demand which he expects; and if he buys the foreign article, he pays for it the price which the importer demands and the duty which the state demands. The whole mass of articles in the merchant's hands, foreign and native, must now be viewed as the produce of the importing country. Any tax which the state may have raised, directly or indirectly, on the native produce, raises its price; and the tax which it imposes on the imported article raises the price of that article and also the price of the native product. The average price, therefore, at which the merchant can furnish the articles of foreign and domestic produce, is raised; and the consumer must pay this price. The state derives no benefit from the tax or duty on the imported article beyond the bare amount of the tax; it may even be injured in other ways by the tax which the consumer is thus made to pay, for he could get the article cheaper if there were no tax, and his means of purchasing other things and paying other taxes are so far diminished. The effect on the producer of the domestic article, which comes into the market in competition with the foreign article, appears to be this. The fact of the foreign article being introduced and sold to any considerable amount while there is a domestic article, shows either that the foreign article is wanted to supply the deficiency of the home production, or that it is preferred to it. In either case the producer of the domestic article can ask a higher price for it than he could if there were no duty on the imported article. The duty, therefore, gives something to the native producer, which he would not be able to get if there were no duty. This explanation applies to all articles of native produce which are not subject to an excise duty, if there are any such; and, at least, it applies to grain. Now the additional price which the producer of grain is enabled to get because there is an import duty on foreign grain, does not ultimately go into his pocket. It goes to the owner of the land, whoever he may be, whether the occupier or another. For there is a competition among farmers for land to occupy; and they will offer

rent up to that amount which will leave them the usual rate of profit. And if a man farms his own land, he will equally have the advantage of the tax; for he can either profitably farm his land when there is no duty on imported grain, or the duty on imported grain enables him to cultivate land which otherwise he could not cultivate, because the duty raises the price. The state raises a tax on the imported corn, which the consumer pays; and this tax enables the producer of grain to demand of the consumer another sum of money, which to the consumer is just the same as a tax. All duties, therefore, on articles imported into a country, which are also the products of that country, and are not subject to an internal duty, are of the class called protection-duties, whatever their amount may be. It is not the object of this article to discuss how far such protection may be equitably given to any class of producers or proprietors in a highly-taxed country. It is sufficient to show that all persons as consumers are injured by the tax, and that the only persons who receive any benefit from it are the owners of land. If the land is not so highly taxed in those countries in which there is a duty on imported grain as in other countries, the injustice of such a tax is the more flagrant.

There is another mode of viewing the operation of a fixed duty upon corn (*Economist Newspaper*, Dec. 5, 1843). It is urged by those who maintain that such a duty cannot be other than a protective duty, that no supply of foreign corn can be obtained in the importing country until the price of corn in such country has risen high enough to pay the price of corn in the exporting country, with all the costs of transport, and the fixed duty also. It is further maintained, that the price of *all* the corn in the importing country must be so raised before foreign corn will come in; and, consequently, that in any season when there is a deficiency of corn in the importing country, it is not merely the duty on the foreign grain imported that must be paid by the consumer, but he will have to pay an amount equal to the fixed duty on all the corn that is raised in the importing country for the consumption of a given period, for instance, one year. Thus, if the consumption is 20,000,000 quarters, and the deficiency is 2,000,000 quarters, a fixed duty of 5*s.* per quarter on the 2,000,000 quarters will cause a rise of 5*s.* in the quarter on the 18,000,000 quarters also. Accordingly the state will get the duty on the 2,000,000 quarters, which the consumer will pay, and somebody else will get the 5*s.* per quarter on the 18,000,000 quarters, which the consumer also will have to pay. The truth of this proposition may be questioned. The sum which the consumer will have to pay will certainly be more than the duty on the 2,000,000 quarters, but perhaps somewhat less than the 5*s.* per quarter on the remaining 18,000,000 quarters. For something must be allowed for the fact that all the 18,000,000 are not in the market for sale at once. Under a fixed duty, some of the 2,000,000 quarters of imported corn would be sold when the market price has risen to (say) 47*s.* the quarter; and an advance of a shilling or two in the price will induce other holders to sell their corn; but all holders may not have done so. The market price may then turn, and others will dispose of their warehoused grain while the market is falling. The home market may then become depressed for a considerable period; and during this period it may be so low as to render it unprofitable to import foreign corn, even at a duty of two or three shillings. In this case then the consumers are not paying 5*s.* per quarter higher than they would have done if the trade were free. Something also must be allowed for the disposition of merchants to speculate; and both they and the producers are liable to be acted upon by the apprehension of falling markets, when, as sometimes happens, a real panic takes place, and prices are unnaturally depressed. We should be disposed, therefore, to qualify the assertion of the 'Economist' by the conclusion that, in an importing country, with a fixed duty of 5*s.*, the average price of corn, in a series of years, will be somewhere about 5*s.* a quarter higher than it would have been if the trade had been free; and perhaps this is all which the writer intended strictly to contend

for. It may perchance turn out that the consumer will have to pay more than 5*s.* per quarter on the 18,000,000 quarters; but it seems hardly safe to assert that he will have to pay exactly 5*s.*, neither less nor more.

A chimerical difficulty is sometimes raised of this kind. If a country does not produce all the grain that it requires, or if it is dependent for any considerable amount on foreign trade, it may suffer from scarcity in some seasons, and in time of war might be in danger of famine. As to the scarcity, experience shows that no dependence can be placed on a regular foreign supply, unless there is a regular trade in corn, that is, a trade into which a man can enter as he would into any other well regulated trade. If a scarcity should ever happen in the importing country, it will be remedied by the stores of grain on hand that are supplied by a steady trade. If the trade is unsteady and uncertain, the scarcity may be supplied or it may not: but it must be supplied at a higher cost, and sometimes it may be difficult to get a supply at all. Rome, both under the republic and the empire, was in part supplied with foreign grain, but the supply was uncertain, for it was not all furnished in the way of regular trade, but sometimes called for as a forced contribution, sometimes accepted as a gift, and it was often purchased by the state, for the purpose of distribution among the poor, either gratis or at a low price. All Italy imported grain largely under the early emperors. The scarcity with which Rome was sometimes threatened was not owing to the grain coming from foreign parts, but to the fact that there was not a steady trade founded on a regular demand by a body of persons able to pay for it. This subject requires further explanation. [CORN TRADE.] If a government shall regulate or attempt to regulate the foreign trade by scales of duties varying according to any law that the wisdom of a legislature may select, the result will be the same, great irregularity in price and sometimes scarcity. It makes little difference whether the state imports directly or regulates the importation of its subjects by a capricious rule. The direct importation of the state, if well managed, would obviously be the safer plan of the two. What is here said of the Roman system applies only to the importation of foreign grain into the city of Rome. The necessity which existed for the importation is a question that can only be discussed with the question of cultivation in ancient Italy, and the gratuitous distributions of grain at Rome. Dureau de la Malle has some valuable remarks on this subject (*Economie Politique des Romains*); but we do not assent to all his conclusions.

The fear that war might shut out the supplies of grain which are brought into a country under a regular corn trade cannot enter into the minds of those who view the question without prejudice. War does not and cannot destroy all trade; it may impede it and render it difficult, but trade has existed in all wars. The supposition that a rich manufacturing country which abounds in all the useful products of industry cannot under any circumstances buy corn out of its superfluity, is a proposition which should be proved, not confuted. It belongs to those who maintain this proposition to give reasonable grounds for its truth.

For some remarks in this article the writer is indebted to Ganilh, *Dictionnaire d'Economie Politique*, art. *Agriculture*.

AGRICULTURE, INSTITUTIONS AND SOCIETIES FOR THE PROMOTION OF. The effect of legislative enactments which have for their object the advantage of agriculture are treated of under the heads AGRICULTURE and BOUNTY. Societies for the "Protection" of Agriculture have nothing to do with Agriculture as a science; but the improvement of every branch of rural economy has been largely promoted by societies of a different kind; and those which have been, or are at present, most active in this way, may here be briefly noticed.

The Board of Agriculture, established chiefly through the exertions of Sir John Sinclair, and incorporated in 1793, was a private association of the promoters of agricultural improvement; but as it was assisted annually by a parliamentary grant, it was regarded by the country as in some sort a semi-official institution. One of its

first proceedings was to commence a survey of all the English counties on a uniform plan, which brought out, for the information of the class most interested in adopting them, improved practices, originating in individual enterprise or intelligence, and which were confined to a particular district. The 'Surveys' are many of them imperfectly executed, but they were useful at the time, in developing more rapidly the agricultural resources of the country. During the years of scarcity at the end of the last and beginning of the present century, the Board of Agriculture took upon itself to suggest and, as far as possible, provide remedies for the dearth—by collecting information and making reports to the government on the state of the crops. The statistics which the Board collected were also at times made use of by the minister, or at least were believed to be so, in connection with his schemes of taxation. The Board encouraged experiments and improvements in agriculture by prizes; and the influence which it possessed over the provincial agricultural societies excited and combined the efforts of all in one direction. The Board of Agriculture was dissolved in 1816. The Smithfield Cattle Club, which has been in existence half a century, and some of the provincial agricultural societies, especially the Bath and West of England Society, which commenced the publication of its 'Transactions' nearly seventy years ago, have been very useful auxiliaries, if not promoters of agricultural improvement. Until within the last few years, the exertions of Agricultural Societies have been too exclusively devoted to the improvement of stock.

With the establishment of the 'Royal Agricultural Society of England' a new æra commenced in the history of institutions for the improvement of English agriculture. This Society, when it was established, in May, 1838, consisted of 466 members. At the first anniversary, in May, 1839, the number of members had increased to 1104; in May, 1840, there were 2569 members; in December of the same year, 4262; in December, 1841, 5382; in May, 1842, 5834; and by the following May, 1843, the number had been increased by the election of 1436 new members. At the sixth anniversary of the Society, in May, 1844, the number of members was 6927, of whom 274 had been elected in the preceding three and a half months; and there had previously been struck off the list 249 names of members who were either dead or had not paid their subscriptions. The number of life-governors (who pay on admission the sum of 50*l.*) was 95 in May, 1844; and there were 214 annual governors, who pay 5*l.* yearly; of life members, who pay 10*l.* on admission, there were 442; and of annual members, who pay 1*l.* yearly, there were 6161. At the above date, the funded property of the Society amounted to 7700*l.*, and the current cash balance to 2000*l.* On the 26th of March, 1840, the Society received a charter of incorporation, on which it assumed the designation of the 'Royal Agricultural Society for England.' By the 22nd rule of the Society, "No question shall be discussed at any of its meetings of a political tendency, or which shall refer to any matter to be brought forward, or pending, in either of the Houses of Parliament;" and this rule is made permanent by the charter of incorporation. The objects of the Society, as set forth in the charter of incorporation, are: 1. To embody such information contained in agricultural publications and in other scientific works as has been proved by practical experience to be useful to the cultivators of the soil. 2. To correspond with agricultural, horticultural, and other scientific societies, both at home and abroad, and to select from such correspondence all information which, according to the opinion of the Society, may be likely to lead to practical benefit in the cultivation of the soil. 3. To pay to any occupier of land, or other person, who shall undertake, at the request of the Society, to ascertain by any experiment how far such information leads to useful results in practice, a remuneration for any loss that he may incur by so doing. 4. To encourage men of science in their attention to the improvement of agricultural implements, the construction of farm-buildings and cottages, the application of chemistry to the general purposes of

agriculture, the destruction of insects injurious to vegetable life, and the eradication of weeds. 5. To promote the discovery of new varieties of grain, and other vegetables, useful to man, or for the food of domestic animals. 6. To collect information with regard to the management of woods, plantations, and fences, and on every other subject connected with rural improvement. 7. To take measures for the improvement of the education of those who depend upon the cultivation of the soil for their support. 8. To take measures for improving the veterinary art, as applied to cattle, sheep, and pigs. 9. At the meetings of the Society in the country, by the distribution of prizes, and by other means, to encourage the best mode of farm cultivation and the breed of live stock. 10. To promote the comfort and welfare of labourers, and to encourage the improved management of their cottages and gardens.

The Society has already directed its attention to nearly all the objects above mentioned. The country meetings of the Society, which take place annually in July, have perhaps been more serviceable in stimulating agricultural improvement than any other of the Society's operations, by concentrating the attention of the Society upon each part of the country in succession, and by exciting the attention of each district to the objects which the Society is intended to promote. England and Wales are divided into nine great districts, and a place of meeting in each is fixed upon about a year beforehand. In 1839, the first meeting was held at Oxford; and others have been successively held at Cambridge, Liverpool, Bristol, and Derby. The meeting for 1844 will be held at Southampton; and that for 1845 at Shrewsbury; in 1846, in some town in the Northern district; and in 1847 the circuit will be completed by the meeting being held in the South Wales district. The value of the prizes distributed in 1839, at Oxford, amounted to 790*l.*; and at the Southampton meeting, in 1844, their value will exceed 1400*l.* The show of agricultural implements at Derby comprised 700 different articles, and the aggregate value of implements, according to the selling price of each, declared by the makers, was about 7400*l.* There can be no doubt that the mechanics of agriculture have made great progress since the establishment of the Society. The opportunity of contrasting and estimating the utility of various implements used for similar purposes in different districts or in different soils, cannot fail to extend improvement from one district to another. It has been said that even down to the present time the north and west of England have little more acquaintance with the practices of each other than two distinct nations might be supposed to possess; and one of the principal results effected by such institutions as the Royal Agricultural Society is to introduce the best practices of husbandry from the districts where agriculture is in its most improved state into those where it is most backward. Attached to the Society's house there is a reading-room, and a library, to which has recently been added by purchase the books forming the library of the late Board of Agriculture. As a means of diffusing information on agricultural subjects, the publication of the 'Journal' of the Society was commenced in April, 1839, and it has at present a circulation of nearly 10,000. The prize essays and all other communications intended for publication in the 'Journal' are referred to the Journal Committee, who decide upon the arrangements of the work. The 'Journal,' contains besides very valuable contributions of a practical as well as scientific character. Prizes have already been awarded for essays on the agriculture of Norfolk, Essex, and Wiltshire; and the agriculture of Notts, Cornwall, and Kent, will be the subject of essays to be sent in by March, 1845.

The success of the Royal Agricultural Society has revived the spirit of existing associations, or led to the formation of new ones. Perhaps in no department of industry or science does there exist so general a spirit of improvement at the present time as in the kindred branches of agriculture and horticulture. Some of the provincial agricultural societies are on a scale which a few years ago could scarcely have been anticipated of a central and metropolitan society.

The Yorkshire Agricultural Society holds its annual show in the different towns of that county in rotation, a plan which is very successful in rendering them attractive. Farmers' clubs have also recently become more numerous. They are eminently practical; but the local results which they collect and discuss may become applicable to other parts of the country placed under similar circumstances of aspect, soil, and situation. It would stimulate the exertions of these clubs, if a department of the 'Journal of the Royal Agricultural Society' were reserved for some of the best papers read at their meetings. The annual report of every farmers' club should be transmitted to the secretary of the Royal Agricultural Society; and the title at least of all papers read at the meetings during the year should be given in the 'Journal.'

The agriculture of Scotland has been largely indebted to the societies which have been established at different periods for its improvement. A 'Society of Improvers in the Knowledge of Agriculture in Scotland' was established in 1723, and some of its Transactions were published. The society becoming extinct was succeeded by another in 1755; and the society which now stands in the same relation to Scotland as the Royal Agricultural Society to England was established in 1784. It is entitled the 'Highland and Agricultural Society of Scotland.' The constitution and proceedings of the society are as nearly as possible similar to the English society. The society publishes quarterly a very excellent Journal of its Transactions, which has at present a circulation of 2300. The Agricultural Museum at Edinburgh was assisted in 1844 by a parliamentary grant of 5000*l.*

In 1840 the 'Royal Agricultural Improvement Society of Ireland' was established on the plan of the Royal Agricultural Society of England; and in May, 1844, the number of subscribers was 581. The society already possesses funded property to the amount of 4859*l.* Since its establishment great progress has been made in the formation of local societies in communication with the central society, which is the best means of ensuring the support and co-operation of the agricultural class in every part of the country. In 1841 there were only twenty-three of these bodies in existence, and at the half-yearly meeting in May, 1844, it was stated that the number was not less than one hundred. A very judicious arrangement has been made relative to the prizes distributed at the local meetings, which are now given for operations in husbandry only, the premiums for stock being furnished by the local association. The society is establishing an agricultural museum in Dublin for the reception of implements of husbandry, seeds, grasses, &c.; it circulates practical information connected with husbandry by means of cheap publications; and one of its objects is the organization of an agricultural college.

In England there are no institutions of a public nature which combine scientific with practical instruction in agriculture. The advantage of establishing such an institution was suggested by the poet Cowley; and in 1799 Marshall published 'Proposals for a Royal Institute or College of Agriculture and other branches of Rural Economy.' There is the Sibthorpian Professorship of Rural Economy in the University of Oxford; at the University of Edinburgh, a Professorship of agriculture; and at the University of Aberdeen there are lectures on agriculture. The botanical, geological, and chemical professorships and lectures in the different universities are, to a certain extent, auxiliary to the science of agriculture. In the absence of such establishments as the one at Grignon, in France, young men are sent as pupils to farmers in the counties where the best system of agriculture is practised, especially Norfolk, Lincolnshire, Northumberland, and the Lothians; but although this may be a good plan for obtaining practical knowledge, it is imperfect as regards the knowledge gained of the scientific principles of agriculture. The Earl of Ducie has established a model or example farm on his estate in Gloucestershire, where the scientific principles of agriculture are carried into operation; but this is very different from an institution which imparts a knowledge of these principles. In 1839 the late B. F. Duppa, Esq., published

a short pamphlet entitled 'Agricultural Colleges, or Schools for the Sons of Farmers,' which contains many useful suggestions for the establishment of such institutions. He laboured indefatigably in the promotion of this object, and probably would have succeeded but for his premature death. It is not improbable, indeed, that before long an agricultural college will be established in England, with an example-farm attached to it, as the Cirencester Farmers' Club, under the auspices of several noblemen and the principal landowners of the district, have issued proposals for such an institution; and in May, 1844, the club announced by advertisement their intention to apply for a charter of incorporation; and also advertised for tenders of farms of from 300 to 600 acres.

Schools of industry, similar to the one established by the late Rev. W. L. Rham at Winkfield, and by the Earl of Lovelace at Ockley, may be made the medium of imparting an acquaintance with the principles of agriculture, which at present the labouring classes do not usually obtain. To Winkfield school there are attached about four acres of good land; and under the guidance of so accomplished an agriculturist as Mr. Rham the scholars enjoyed the advantage of pursuing all the details of the most skilful husbandry, and undergoing a course of training in garden and farm management of no ordinary excellence. On Mrs. Davies Gilbert's estate there is a school of manual labour, and the principle on which it is established might perhaps be made conducive on a large scale to the two objects of enabling the scholars to acquire the elements of learning and of fitting them by proper industrial training to become expert and industrious in field and garden work. At the school here spoken of the master is paid one penny per week for each boy; but the chief emolument of the master arises from the labour of the boys on the school land. Their time is divided into two portions, one part of which the master devotes to their instruction in reading, writing, &c., and in return for which they employ another portion of their time in cultivating his land. (*Committee of Council on Education*, 1844.)

In Ireland the government affords direct encouragement to agricultural education through the instrumentality of the Board of National Education. The persons who are trained for the office of teachers in the national schools are required to attend the lectures of a professor of agricultural chemistry; and during a portion of the time occupied in preparing for their future duties they are placed at the model farm at Glassneven, where they are lodged, and where, during five mornings of the week, they attend lectures on the principles of agriculture; and an examination subsequently takes place. On the sixth morning they are taken over the farm, and the operations going forward are explained to them. The Board admits a certain number of in-door pupils for the term of at least two years, who pay 10*l.* a year for board, lodging, and education. They work on the farm, attend the lectures, and receive such instruction as qualifies them to fill the office of bailiffs. There is likewise a class of schoolmasters trained to conduct agricultural schools. It is intended to establish twenty-five agricultural model schools in different parts of the country. The Agricultural Seminary at Templemoyle, six miles from Londonderry, is one of the most successful experiments which has yet been made in the United Kingdom to establish an institution for agricultural education. It was founded by the North West of Ireland Society. The plan is in some degree taken from the institution established by M. Fellenberg, at Hofwyl, in Switzerland. In 1841 the house contained 70 young men, as many as it can accommodate and the farm afford instruction to; and there were 40 applications for admission. The size of the farm is 172 acres. An account of the institution and of the course of instruction will be found in the 'Minutes of the Committee of Council on Education,' p. 565, 8vo. ed.

Such societies as the Scottish Agricultural Chemistry Association, established at the close of 1843, are very well calculated to advance the progress of scientific agriculture; and they can be es-

tablished in any district where a sufficient number of subscribers can be obtained to command the services of a competent chemist. Associations of this nature show how much can be done in this country without any assistance from the state. The object of the Scottish association is the diffusion of existing information, theoretical and practical, by means of occasional expositions, addresses, and correspondence; and secondly, the enlargement of the present store of knowledge by experimental investigations of practical agriculturists in the field and of the chemist in the laboratory. Landed proprietors who subscribe twenty shillings yearly, and tenants who subscribe ten shillings yearly, are entitled to have performed analyses of soils, manures, &c., according to a scale fixed upon; and if more than a certain number are required, a charge of one-half above the scale is made. Letters of advice, without an analysis being required, are charged 2*s.* 6*d.*, and at present the number which each subscriber may write is not limited. Every agricultural society subscribing 5*l.* yearly to the funds of the Association is entitled to one lecture from the chemist; if 10*l.* to two lectures, &c. Counties which subscribe 20*l.* annually are entitled to appoint a member of the Committee of Management. The Society in question has raised a fund sufficient to defray all expenses for the ensuing four years. The chemist of the association has his laboratory at Edinburgh, but he is to visit various parts of Scotland according to certain regulations.

In France there are schools assisted by the state, where young persons can obtain instruction in agriculture both practical and theoretical. The principal institution of this kind is that at Grignon, where one of the old royal palaces and the domain attached to it, consisting of 1185 acres of arable, pasture, wood, and marsh land, has been given up on certain conditions. The professors are paid by the government, and the pupils are of two grades, one paying 48*l.* a year, and the other 36*l.* For the purpose of imparting theoretical knowledge, courses of lectures are given on the following subjects:—1. The rational principles of husbandry, and on the management of a farm. 2. The principles of rural economy applied to the employment of the capital and stock of the farm. 3. The most approved methods of keeping farming accounts. 4. The construction of farm-buildings, roads, and implements used in husbandry. 5. Vegetable physiology and botany. 6. Horticulture. 7. Forest science. 8. The general principles of the veterinary art. 9. The laws relating to property. 10. Geometry applied to the measurement and surveying of land. 11. Geometrical drawing of farming implements. 12. Physics as applied to agriculture. 13. Chemistry, as applied to the analysis of soils, manures, &c. 14. Certain general notions of mineralogy and geology. 15. Domestic medicine, applied to the uses of husbandmen. The practical part of the education is conducted on the following system:—The pupils are instructed in succession in all the different labours of the farm. Some, for instance, under the direction of the professor of the veterinary art, perform the operations required by the casualties which are continually occurring in a numerous stock of cattle. Others are appointed to attend to the gardens, and to the following departments: woods and plantations; inspection of repairs taking place on the premises; making of starch, cheese, and other articles; the pharmaceutical department; book-keeping and the accounts. A daily register is kept of the amount of the manure obtained from the cattle of every kind. A pupil newly entered is appointed to act with one of two years' standing; and at the end of each week all are expected to make a report, in the presence of their comrades, of whatever has been done during the week in their respective departments. The professor, who presides over the practical part of their education, explains on the spot the proper manner of executing the various field operations; and he also gives his lectures on these different processes at the time when they are in actual progress. The professors in each department render their courses as practical as possible;—the professor of botany by herborizations; the professor of chemistry by geological excursions;

the professor of mathematics, by executing, on the plan he has pointed out, the survey and measurement of certain portions of land. After two years' training in the theory and practice of rural economy, the pupils undergo an examination from the professors collectively, and, if satisfactory, a diploma is granted, which certifies to the capacity of the pupil for fulfilling the duties of what may be styled an "Agricultural Engineer."

Institutions designed for the improvement of agriculture, and supported by the state, have been established in most parts of Germany. In Prussia there is a public model farm and agricultural academy in nearly every province. The most important of these institutions is the one at Mögelin, in Brandenburg, about forty miles from Berlin, which was founded by the late king. Von Thaer was at one period the director. The establishment consists of a college and a model farm of 1200 acres. When visited by Mr. Jacob, in 1820 ('Agriculture, &c. of Germany'), there were three professors, who resided upon the premises: one for mathematics, chemistry, and geology; one for the veterinary art; and the third for botany and the use of the various vegetable productions in the Materia Medica, as well as for entomology. Attached to the institution there was a botanic garden, arranged on the Linnæan system; an herbarium; a museum containing skeletons of domestic animals, models of agricultural implements, specimens of soils, &c. The various implements were made in workshops upon the farm, and the pupils were expected to acquire a general notion of the modes of constructing them. The sum paid by each pupil was very high, not less than 80*l.* a year.

At Hohenheim, in the kingdom of Wirtemberg, two leagues from Stuttgard, an old palace has been appropriated as an agricultural college. The quantity of land attached to the institution is about 1000 acres. The pupils are of two grades, and those belonging to the superior class pay for their board 150 florins, and for their instruction 300 florins a year, or altogether 37*l.*, and extra expenses make the annual cost about 50*l.* Natives of Wirtemberg are admitted at a lower rate than the subjects of other states. The higher class of students do not, as at Grignon, take part in the actual labours of husbandry, but the means of theoretical instruction are very complete. Lectures are delivered by twelve professors on the following subjects:—Mathematics and physics, chemistry and botany, technology, tillage and other departments of rural economy, forestry, and the veterinary art. The lectures are so arranged that they can be either attended in two half-years or three or four. In the former case much preliminary information must have been acquired. There is attached to the institution a small botanical garden; a museum of zoological, botanical, and mineralogical objects; skeletons of domestic animals; collections of seeds and woods; and a library of works on rural economy. The establishment also comprises a manufactory of beet-root sugar, a brewery, a distillery of potato-spirit, and there is an apartment devoted to the rearing of silkworms. A part of the farm is reserved for experiments. The second class of students do the manual labour, but they are nearly maintained at the expense of the institution, and, when they can be spared from field-labour, they have the opportunity of attending the lectures at the college.

In Bavaria the king has given up the domain attached to the royal palace of Schleissheim for the purposes of a model farm; but a great mistake has been made in selecting land much below the average standard of fertility, which, as well as land of extraordinary productiveness, should be avoided. It is on a much inferior scale to the establishment at Hohenheim. In 1840 there were twenty-one scholars who paid about 15*l.* a year, and eleven who paid about 6*l.* The latter are merely field-labourers; and those who belong to the upper class are of about the same grade as the second class at Hohenheim.

There are agricultural institutions supported by the state at Vienna, Prague, Pesth, and various other places in the south-east of Europe. (*On public Institutions for the Advancement of Agricul-*

tural Science, by Dr. Daubeny; *Journals of Royal Agric. Soc. of England*; Dr. Lindley's *Gardener's Chron. and Agric. Gazette*, &c. &c.)

AGRICULTURE, STATISTICS OF. In several countries of Europe there is a department of government organized either for collecting the statistics of agriculture or superintending institutions which have immediate relation to that branch of industry. In France these duties devolve upon a department of the Minister of Commerce and Agriculture. The management of the royal flocks, veterinary schools, and the royal studs; the distribution of premiums in agriculture; the organization and presidency of the superior and special councils of agriculture, are comprised in the duties of this ministerial department. The councils-general of agriculture, &c. in each department of France collect the agricultural statistics from each commune; and the quantity of land sown with each description of grain, the produce, and the quantity of live stock for the whole of the kingdom, are accurately known and published by the Minister of Commerce and Agriculture. In Belgium these facts are ascertained periodically, but not every year. In the United States of North America, at the decennial census, an attempt is made to ascertain the number of each description of live stock, including poultry; the produce of cereal grains, and of various crops; the quantity of dairy, orchard, and garden produce, &c., in each State. There are twenty-nine heads of this branch of inquiry. The only countries in Europe which do not possess statistical accounts of their agriculture founded on official documents are England and the Netherlands. In England the quantities of corn and grain sold in nearly three hundred market-towns, the quantities imported and exported, and the quantities shipped coastways, are accurately known, but no steps are taken by any department of the government to ascertain the quantities produced. On the same principle that a census of the population of a country is useful, it must be useful to have an account of its productive resources. The absence of official information is supplied by estimates of a conjectural character, founded at best only on local and partial observation. In France it is positively ascertained that the average produce of wheat for the whole kingdom is under fourteen bushels per acre. In England it is known that the maximum produce of wheat per acre is about forty bushels, and that the minimum is about twenty bushels. The usual conjecture is that the average produce of the kingdom in years of fair crops is about twenty-eight bushels, but the total superficies sown with wheat or any other grain, and the total quantity of the produce, are matters simply of conjecture. The only statement the public or even the government are in possession of in respect to the quantity of land cultivated and uncultivated, and of land incapable of producing grain or hay, in Great Britain, rests upon the authority of private inquiry made by one person, Mr. Couling, a civil engineer and surveyor, who gave the details to the parliamentary committee on emigration in 1827, now seventeen years ago. As there is an account published weekly in the 'London Gazette' of the quantity of each description of grain sold in nearly three hundred market-towns in England, with the average prices, and the quantity of foreign corn and grain imported is also officially published, it would be putting into the hands of the community very important elements of calculation in reference to the supply of food, if they could also learn after each harvest what had been the breadth of land under cultivation for each species of produce respectively, and the amount of produce harvested. The result could not fail to be felt in greater steadiness of price, which is particularly desirable for the interests of the tenant farmer, and also highly advantageous to the public. For example, the harvest of 1837 was deficient to so great a degree, that before the produce of 1838 was secured the great superabundance of the two preceding harvests was all consumed, and the stock of grain was more nearly exhausted than it was ever known to have been in modern times. A reasonable advance of price would have checked consumption, which, as regards wheat, had been going on with unwonted profusion, but in

August, September, and October, 1837, the markets fell from 60*s.* 1*d.* to 51*s.* per quarter, and it was not until the middle of the following May that the average was again as high as it had been just before the harvest of 1837. By the third week in August, 1838, the average had risen to upwards of 73*s.*, and wheat was admissible at the lowest rate of duty. The buyers consequently resorted suddenly to nearly every corn-market in Europe, and prices, aided by a wild spirit of speculation, which subsequently was productive of great loss to importers, rose enormously. It is contended that these losses and the fluctuation of prices would not have occurred if the produce of the harvest of 1837 had been more accurately known. (*On the Collection of the Statistics of Agriculture* by G. R. Porter, Esq., of the Board of Trade.) The probable operation which statistical facts officially collected would have upon agricultural improvement is thus adverted to by Mr. Porter:—"It has been stated that if all England were as well cultivated as the counties of Northumberland and Lincoln, it would produce more than double the quantity that is now obtained. . . . If the cultivators of land, where agricultural knowledge is the least advanced, could be brought to know, upon evidence that could not admit of doubt, that the farmer of Northumberland or Lincolnshire procured, from land of fertility not superior to his own, larger and more profitable crops than he is in the habit of raising, is it likely that he would be contented with his inferiority?" In 1836 the late Lord Sydenham, while president of the Board of Trade, in order to test the probability of success that might result from a more extended attempt, caused circular letters containing fifty-two simple but comprehensive queries relating to agriculture to be sent to each clergyman in the one hundred and twenty-six parishes of Bedfordshire. Out of this number only 27, or about one in five, replied, and further inquiry was abandoned. The tithe commissioners make returns of the crops in all parishes, but they do not do so simultaneously. There is, however, no insuperable difficulty in collecting the national statistics of agriculture, whenever government thinks fit to undertake such a duty. On the 18th of April, 1844, on a motion in the House of Commons for an address to the queen praying for the establishment of some method of collecting agricultural statistics, the vice-president of the Board of Trade, on the part of the government, concurred in the object of the motion, but from various causes he declined at that time giving the motion his support. The yearly expense of the inquiry would be from 20,000*l.* to 30,000*l.*; and probably not a long period will elapse before the appropriate machinery will be in operation. In this way can government advance the interests of agriculture and of the public at the same time. In a country like England, which abounds with men of rank, wealth, and intelligence, who engage in scientific agriculture as a favourite pursuit, it is quite unnecessary for the government to assume the superintendence of matters which relate to practical agriculture; but this may be done with propriety in other countries, which are placed in different circumstances.

AIDE-DE-CAMP, a French term, denoting a military officer usually of the rank of captain, one or more of whom is attached to every general officer, and conveys all his orders to the different parts of his command. A field-marshal is entitled to four, a lieutenant-general to two, and a major-general to one. The king appoints as many aides-de-camp as he pleases, and this situation confers the rank of colonel. In January, 1844, the number of aides-de-camp to the queen was thirty-two. There were also eleven naval aides-de-camp to the queen, one of whom, of the rank of admiral, is styled first and principal aide-de-camp, and has a salary of 365*l.* per annum; and ten others, of the rank of captain, have 182*l.* 11*s.* per annum. There are also two aides-de-camp appointed by the queen from the officers of the Royal Marines, whose salary is the same as that of the naval aides-de-camp.

AIDS (directly from the French *Aides*, which in the sense of a tax is used only in the plural number). Under the feudal system, aids were certain claims of the lord upon the vassal, which were not so directly connected with the tenure of

land as reliefs, fines, and escheats. The nature of these claims, called, in the Latin of the age, Auxilia, seems to be indicated by the term: they were originally rather extraordinary grants or contributions than demands due according to the strict feudal system, though they were certainly founded on the relation of lord and vassal. These aids varied according to local custom, and became in course of time oppressive exactions. In France there were aids for the lord's expedition to the Holy Land, for marrying his sister and eldest son, and for paying a relief to his suzerain on taking possession of his land. The aids which are mentioned in the Grand Coustumier of Normandy for knighting the lord's eldest son, for marrying his eldest daughter, and for ransoming the lord from captivity, were probably introduced into England by the Normans. But other aids were also established by usage or the exactions of the lords, for, by Magna Charta, c. 12, it was provided that the king should take no aids, except the three above mentioned, without the consent of parliament, and that the inferior lords should not take any other aids.

The three kinds of aids above mentioned require a more particular notice, as this contribution of the vassal to the lord forms a striking feature in the feudal system of England.

1. When the lord made his eldest son a knight;—this ceremony occasioned considerable expense, and entitled the lord to call upon his tenant for extraordinary assistance. 2. When the lord gave his eldest daughter in marriage, he had her portion to provide, and was entitled to claim a contribution from his tenants for this purpose. The amount of these two kinds of aid was limited to a certain sum by the Statute of Westminster 1, 3 Ed. I. c. 36, namely, at 20*s.* for a knight's fee, and at 20*s.* for every 20*l.* per annum value of socage lands, and so on in proportion. It was also provided that the aid should not be levied to make his son a knight until he was fifteen years old, nor to marry his daughter until she was seven years old. 3. The third aid, which was to ransom the lord when taken prisoner, was of less frequent occurrence than the other two, and was uncertain in amount; for if the lord were taken prisoner, it was necessary to restore him, however exorbitant the ransom might be. In the older treatises on feudal tenures there is much curious matter upon the various kinds of aids. Aids for knighting the lord's son and marrying the lord's daughter are abolished by the stat. 12 Car. II. c. 24, and the aid for ransoming the lord's person is obsolete.

Aids is also a general name for the extraordinary grants which are made by the House of Commons to the crown for various purposes. In this sense, aids, subsidies, and the modern term supplies, are the same thing. The aids were in fact the origin of the modern system of taxation.

Auxilia is the Latin word used by Bracton and other writers when they are speaking of the feudal aids above enumerated. The word *Aide* is not derived from the Latin *Auxilium*, but from the Low Latin *Adiuda*. (Du Cange, *Gloss. Med. et Infim. Latin.*) The Spanish form *ayuda*, 'assistance,' and the Italian *aiuto*, also clearly indicate the origin of the word 'aide,' which is from the participal form *adjuta* of the Latin verb *adjuvare*.

ALBINATUS JUS. [AUBAINE.]

ALDERMAN. This word is from the Anglo-Saxon *ealdorman* or *eoldorman*. The term *ealdorman* is composed of *ealdor*, originally the comparative degree of the adjective *eald*, 'old,' and *man*; but the word *ealdor* was also used by the Anglo-Saxons as a substantive, and as such it was nearly synonymous with the old English term *elder*, which we so often meet with in the English version of the Bible. A prior of a monastery was called *Temples-ealdor*; the magistrate of a district, *Hiredes-ealdor*; the magistrate of a hundred, *Hundredes-ealdor*, &c. In a philological sense, the terms *ealdor* and *ealdorman* were synonymous and equivalent; but in their political acceptation they differ, the former being more general, and, when used to express a specific degree, commonly denoting one that is lower than *ealdorman*. In both terms the notion of some high office, as well as that of rank or dignity, seems to be inherent;

but *ealdorman* at the same time expressed a definite degree of hereditary rank or nobility which *ealdor* does not so necessarily imply. Princes, earls, governors of provinces, and other persons of distinction, were generally termed Aldermen by the Anglo-Saxons. But besides this general signification of the word, it was also applied to certain officers; thus there was an Alderman of all England (*aldermannus totius Angliæ*), the nature of whose office and duties the learned Spelman says "he cannot divine, unless it corresponded to the office of Chief Justiciary of England in later times." There was also a King's Alderman (*aldermannus regis*), who has been supposed to have been an occasional judge, with an authority or commission from the king to administer justice in particular districts: it is very possible, however, that his duties may have resembled those exercised by the king's sergeant in the time of Bracton, when there are strong traces of the existence of an officer so called, appointed by the king for each county, and whose duty it was to prosecute pleas of the crown in the king's name. Spelman, however, doubts whether the King's Alderman may not have been the same person with the Alderman of the county, who was a kind of local judge, intrusted, to a certain extent, with the administration of civil and criminal justice. Besides those above mentioned, there were also Aldermen of cities, boroughs, and castles, and Aldermen of hundreds.

In modern times, Aldermen are individuals invested with certain powers in municipal corporations, either as civil magistrates themselves, or as associates to the chief civil magistrates of cities or corporate towns. The functions of Aldermen, before the passing of the Municipal Corporations Act, varied somewhat, according to the several charters under which they acted.

In the municipal boroughs of England and Wales as remodelled by 5 & 6 Wm. IV. c. 76, the resident burgesses elect councillors, who, in the larger boroughs which are divided into four or more wards, must be burgesses possessing at least 1000*l.* in property or rated at 30*l.* annual value; and in the smaller boroughs they must possess at least 500*l.* in property or be rated at 15*l.* per annum. This principle of qualification by property had no existence under the old municipal system. The councillors thus elected by the burgesses at large hold office for three years, and one-third of their number go out annually. The aldermen are elected by the council from its own number for six years, and one-half go out every three years. One-fourth of the municipal council consists of aldermen, and three-fourths of councillors; but the only difference between them is in the mode of election and in their term of office. In the 178 municipal boroughs remodelled by the act above mentioned, there are 1080 aldermen, and of course 3240 councillors. The number of councillors varies from 12 to 48, according to the size of the borough, and the number of aldermen from 4 to 16.

In the Corporation of London, which is not remodelled by the 5 & 6 Wm. IV. c. 76, the Court of Aldermen consists of twenty-six Aldermen, including the Lord Mayor. Twenty-five of these are elected for life by such freemen as are householders of the wards, the house being of the annual value of 10*l.*, and the freeman paying certain local taxes to the amount of 30*s.*, and bearing lot in the ward. In this way twenty-four of the wards, into which the city is divided, send up one alderman each: the two remaining wards send up another. The twenty-sixth alderman belongs to a twenty-seventh nominal ward, which comprehends no part of the city of London, but only the dependency of Southwark. This alderman is not elected at all, but, when the aldermancy is vacant, the other aldermen have, in seniority, the option of taking it; and the alderman who does take it holds it for life, and thereby creates a vacancy as to the ward for which he formerly sat. The Court of Aldermen possess the privilege of rejecting, without any reason assigned, any person chosen for Alderman by the electors, and, after three such rejections, of appointing an alderman to the vacancy. The Lord Mayor is appointed from such of the aldermen as have served the office of Sheriff. Of these the Common Hall names two, and of these two the Court of Aldermen

selects one. The Court of Aldermen is the bench of magistrates for the city of London, and it possesses also authority of a judicial and legislative nature in the affairs of the corporation. Although the Aldermen form a part of the Court of Common Hall (which consists exclusively of freemen who are liverymen), they are not in the habit of speaking or voting at elections, at least not in the character of Aldermen. They are members of the Court of Common Council, the legislative body of the corporation, which consists of 264 members, all of whom, excepting the Aldermen, are elected annually by the same electors who elect the Aldermen. (*Second Report of the Commissioners of Corporation Inquiry*, 1837.)

In the few boroughs which are not included in the schedules of the Municipal Corporations Act the aldermen are elected according to custom or charter. With the exception of the city of London, these boroughs are insignificant, and the corporation is little better than a nominal body.

ALE, an intoxicating beverage composed of barley or other grain steeped in water and afterwards fermented, has been used from very early times. Pliny the Elder states that in his time it was used among the nations who inhabited the western part of Europe. He says (*Hist. Nat.*, xiv. 29, ed. Hardouin) that the Western nations have intoxicating liquors made of grain steeped, and that the mode of making them is different in the provinces of Gaul and Spain, and their names different, though the principle is the same: he adds that in Spain they had the art of making these liquors keep. He also mentions the use of beer by the Egyptians, to which he gives the name of "Zythum." The Spanish name for it was "celia" or "ceria:" in Gaul it was called "cervisia," a word which was introduced into the Latin language, and is also preserved in the French "cervoise." (Pliny, xx. 25; Richelet, *Dictionnaire*.) Pliny evidently alludes to the process of fermentation, when he says that the foam (spuma) was used by the women for improving the skin of their faces.

Herodotus, who wrote 500 years before Pliny, tells us that the Egyptians used a liquor made of barley (ii. 77). Dion Cassius says that the Pannonians made a drink of barley and millet (lib. xlix. c. 36, and the note in Reimar's edition). Tacitus states that the ancient Germans "for their drink drew a liquor from barley or other grain, and fermented it so as to make it resemble wine." (Tacitus, *De Mor. Germ.* c. 23.) Ale was also the favourite liquor of the Anglo-Saxons and Danes; it is constantly mentioned as used in their feasts; and before the introduction of Christianity among the Northern nations, it was an article of belief that drinking copious draughts of ale formed one of the chief felicities of their heroes in the Hall of Odin. The word ale is metonymically used as a term for a feast in several of the ancient Northern languages. Thus the Dano-Saxon word Iol, the Icelandic Ol, the Suedo-Gothic Oel, the Anglo-Saxon Geol, and our English word Yule are said to be synonymous with feast, and hence the terms Leet-ale, Lamb-ale, Whitsun-ale, Clerk-ale, Bride-ale, Church-ale, Midsummer-ale, &c. (Ellis's ed. of Brand's *Antiquities*, i. p. 159, also p. 258.) Ale is mentioned as one of the liquors provided for a royal banquet in the reign of Edward the Confessor. If the accounts given by Isidorus and Orosius of the method of making ale amongst the ancient Britons and other Celtic nations be correct, it is evident that it did not materially differ from our modern brewing. They state "that the grain is steeped in water and made to germinate; it is then dried and ground; after which it is infused in a certain quantity of water, which is afterwards fermented." (Henry's *History of England*, vol. ii. p. 364.)

In early periods of the history of England, ale and bread appear to have been considered as equally victuals or absolute necessaries of life. This appears from the various assizes or ordinances of bread and ale (*assisæ panis et cervisiæ*) which were passed from time to time for the purpose of regulating the price and quality of these articles. In the 51st year of the reign of Henry III. (1266) a statute was passed, the preamble of which alludes to earlier statutes on the same sub-

ject, by which a graduated scale was established for the price of ale throughout England. It declared that "when a quarter of wheat was sold for three shillings, or three shillings and four-pence, and a quarter of barley for twenty pence or twenty-four pence, and a quarter of oats for fifteen pence, brewers in cities could afford to sell two gallons of ale for a penny, and out of cities three gallons for a penny; and when in a town (in burgo) three gallons are sold for a penny, out of a town they may and ought to sell four." In process of time this uniform scale of price became extremely inconvenient; and by the statute 23 Henry VIII. c. 4, it was enacted that ale-brewers should charge for their ale such prices as might appear convenient and sufficient in the discretion of the justices of the peace or mayors within whose jurisdiction such ale-brewers should dwell. The price of ale was regulated by rules like those above stated, and the quality was ascertained by officers appointed for the purpose. [ALE-CONNER.]

ALE-CONNER. An ale-conner is an ale-kenner, one who kens or knows what good ale is. The office of ale-taster or ale-conner is one of great antiquity. Those who held it were called "gustatores cervisiæ." Ale-conners or ale-tasters were regularly chosen every year in the court-leet of each manor, and were sworn to examine and assay the beer and ale, and to take care that they were good and wholesome, and sold at proper prices according to the assize; and also to present all defaults of brewers to the next court-leet. Similar officers were also appointed in boroughs and towns corporate; and in many places, in compliance with charters or ancient custom, ale-tasters are, at the present day, annually chosen and sworn, though the duties of the office are fallen into disuse. In the manor of Tottenham, and in many others, it was the duty of the ale-conner to prevent unwholesome or adulterated provisions being offered for sale, and to see that false balances were not used. In 4 Jac. I. c. 5, which was intended for the prevention of drunkenness, the officers more especially charged with presenting offences against the act were constables, churchwardens, head-boroughs, tithing-men, ale-conners, and sidesmen.

The duty of the ale-conners appointed by the corporation of the City of London is to ascertain that the beer sold in the city is wholesome, and that the measures in which it is given are fair. For this purpose they may enter into the houses of all victuallers and sellers of beer within the city. The investigation is made four times in the year; and on each occasion it occupies about fourteen days. The days are not publicly known beforehand. Southwark is not visited. The investigation into the wholesomeness of the article has fallen into disuse. Fairness in the measures is ensured by requiring all pots to be stamped with the city arms, and the ale-conners report to the aldermen such houses as do not comply with the rule, and such as have pots with forged stamps. The number of pots annually stamped in the five years from 1829 to 1833 averaged 5599 dozen. In 1829 there were 760 houses on the ale-conners' lists, and in 1833 there were 780. The Commissioners of Corporation Inquiry state that in some instances the owners of the houses have refused to allow the officers to inspect; and that "till very recently the visit of the ale-conners to the several houses took place without any inspection being made." Each of the ale-conners has an annual salary of 10*l.*; and besides this, "either by right or courtesy," they receive a small sum at each house where they visit, varying from 2*s.* 6*d.* to 1*s.* The sums given in this way have become smaller, since the duty has been more carefully performed. In the first quarter of 1833 the ale-conners collected 39*l.* 17*s.*; and in the second quarter, 37*l.* 10*s.* 6*d.* The commissioners state that the income from this source is decreasing. Each ale-conner had, therefore, at the time of the inquiry, a salary of about 35*l.* a year, paid by the City. (*Second Report of Commissioners of Corporation Inquiry*, 1837.) In the municipal boroughs of England and Wales, to which the inquiries of the commissioners extended (234 in number), there were found in twenty-five boroughs officers called "Ale-Tasters;" in six they were termed "Ale-Founders;" and in four "Ale-Conners."

The ancient regulations which the ale-conners were appointed to carry into effect appear to have been dictated by a regard to public health; but in modern times, when ale and beer had become exciseable commodities, the restrictions and provisions introduced from time to time had for their object principally the security of the revenue and the convenient collection of duties. [ADULTERATION.]

ALE-FOUNDER. [ALE-CONNER.]

ALEHOUSES. By the common law of England, a person might open a house for the sale of beer and ale as freely as he might keep a shop for the purpose of selling any other commodity; subject only to a criminal prosecution for a nuisance if his house was kept in a disorderly manner, by permitting tippling or excessive drinking, or encouraging bad company to resort thither, to the danger and disturbance of the neighbourhood. But in course of time this restriction was found to be insufficient; and in the eleventh year of the reign of Henry VII. (1496) an act was passed "against vacabounds and beggers" (11 Hen. VII. c. 2), which contained a clause empowering two justices of the peace "to rejecte and put awey comen ale selling in tounes and places where they shall think convenyent, and to take suertie of the keepers of ale-houses of their gode behavyng by the discrecion of the seid justices, and in the same to be avysed and aggreed at the tyme of their sessions." This slight notice of the subject in the statute 11 Henry VII. c. 2, seems to have been entirely disregarded in practice; and a statute passed in 1552 (5 & 6 Edward VI. c. 25) recites that "intolerable hurts and troubles to the commonwealth of this realm doth daily grow and increase through such abuses and disorders as are had and used in common alehouses and other houses called tippling-houses," and power was given to two justices to forbid the selling of beer and ale at such alehouses; and it was enacted that none should be suffered to keep alehouses unless they were publicly admitted and allowed at the sessions, or by two justices of the peace; and the justices were directed to take security, by recognizances, from all keepers of alehouses, against the using of unlawful games, and for the maintenance of good order therein; which recognizances were to be certified to the quarter-sessions and there recorded. Authority is then given to the justices at quarter-sessions to inquire whether any acts have been done by alehouse-keepers which may subject them to a forfeiture of their recognizances. It is also provided that if any person, not allowed by the justices, should keep a common alehouse, he might be committed to gaol for three days, and, before his deliverance, must enter into a recognizance not to repeat his offence; a certificate of the recognizance and the offence is to be given to the next sessions, where the offender is to be fined 20*s*. This statute formed the commencement of the licensing system, and was the first act of the legislature which placed alehouses expressly under the control and direction of the local magistrates; and alehouses continued to be regulated by its provisions, without any further interference of the legislature, for upwards of fifty years.

In 1604 a statute was passed (2 Jac. I. c. 9) expressly, as the preamble states, for the purpose of restraining the "inordinate haunting and tippling in inns, alehouses, and other victualling houses." This act of parliament recites, that "the ancient, true, and principal use of such houses was for the lodging of wayfaring people, and for the supply of the wants of such as were not able, by greater quantities, to make their provision of victuals, and not for entertainment and harbouring of lewd and idle people, to spend their money and their time in lewd and drunken manner;" and then enacts "that any alehouse-keeper suffering the inhabitants of any city, town, or village, in which his alehouse is situated (excepting persons invited by any traveller as his companion during his abode there; excepting also labourers and handicraftsmen, on working-days, for one hour at dinner time to take their diet, and occasional workmen in cities, by the day, or by the great (by the piece), lodging at such alehouses during the time of their working), to continue drinking or tippling therein, shall forfeit 10*s*. to the poor of the parish for each offence." From the exceptions introduced into this statute, and also from the preamble, it is

clear that, in the time of James I., it was common for country labourers both to eat their meals and to lodge in alehouses.

The operation of the last-mentioned statute was limited to the end of the next session of parliament, in the course of which a statute (4 Jac. I. c. 4) was passed, imposing a penalty upon persons selling beer or ale to unlicensed alehouse-keepers; and by another statute (4 Jac. I. c. 5) of the same parliament, it was enacted that "every person convicted, upon the view of a magistrate, of remaining drinking or tippling in an alehouse, should pay a penalty of 3*s.* 4*d.* for each offence, and in default of payment be placed in the stocks for four hours." The latter statute further directs that "all offences relating to alehouses shall be diligently presented and inquired of before justices of assize, and justices of the peace, and corporate magistrates; and that all constables, ale-conners [ALE-CONNER], and other officers, in their official oaths shall be charged to present such offences within their respective jurisdictions."

The next legislative notice of alehouses is in the 7 Jac. I. c. 10, which, after reciting that "notwithstanding former laws, the vice of excessive drinking and drunkenness did more and more abound," enacts, as an additional punishment upon alehouse-keepers offending against former statutes, that, "for the space of three years, they should be utterly disabled from keeping an alehouse."

The 21 Jac. I. c. 7, declares that the above-mentioned statutes, having been found by experience to be good and necessary laws, shall, with some additions to the penalties, and other trifling alterations, be put in due execution, and continue for ever.

A short statute was passed soon after the accession of Charles I. (1 Car. I. c. 4), which supplied an accidental omission in the statutes of James; and a second (3 Car. I. c. 3) facilitates the recovery of the 20*s.* penalty imposed by the statute of Edward VI., and provides an additional punishment, by imprisonment, for a second and third offence. At this point all legislative interference for the regulation and restriction of alehouses was suspended for more than a century.

The circumstances which led to the passing of the above-mentioned statutes in the early part of the reign of James I., and the precise nature of the evils alluded to in such strong language in the preambles, are not described by any contemporaneous writers. It appears, however, from the Journals, that these statutes gave rise to much discussion in both houses of parliament, and were not passed without considerable opposition. These laws never appear to have produced the full advantage which was expected. During the reign of Charles I. the complaints against alehouses were loud and frequent. In the year 1635 we find the Lord Keeper Coventry, in his charge to the judges in the Star Chamber previously to the circuits, inveighing in strong terms against them. (Howell's *State Trials*, vol. iii. p. 835.) He says, "I account alehouses and tippling-houses the greatest pests in the kingdom. I give it you in charge to take a course that none be permitted unless they be licensed; and, for the licensed alehouses, let them be but a few, and in fit places; if they be in private corners and ill places, they become the dens of thieves—they are the public stages of drunkenness and disorder; in market-towns, or in great places or roads, where travellers come, they are necessary." He goes on to recommend it to the judges to "let care be taken in the choice of alehouse-keepers, that it be not appointed to be the livelihood of a great family; one or two is enough to draw drink and serve the people in an alehouse; but if six, eight, ten, or twelve must be maintained by alehouse-keeping, it cannot choose but be an exceeding disorder, and the family, by this means, is unfit for any other good work or employment. In many places they swarm by default of the justices of the peace, that set up too many; but if the justices will not obey your charge herein, certify their default and names, and I assure you they shall be discharged. I once did discharge two justices for setting up one alehouse, and shall be glad to do the like again upon the same occasion."

During the Commonwealth, the complaints against alehouses still continued, and were of precisely the same nature as

those which are recited in the statutes of James I. At the London sessions, in August, 1654, the court made an order for the regulation of licences, in which it is stated that the "number of alehouses in the city were great and unnecessary, whereby lewd and idle people were harboured, felonies were plotted and contrived, and disorders and disturbances of the public peace promoted. Among several rules directed by the court on this occasion for the removal of the evil, it was ordered that "no new licences shall be granted for two years."

During the reign of Charles II. the subject of alehouses was not brought in any shape under the consideration of the legislature; and no notice is taken by writers of that period of any peculiar inconveniences sustained from them, though in 1682 it was ordered by the court, at the London sessions, that no license should in future be granted to alehouse-keepers who frequented conventicles. Locke, in his 'Second Letter on Toleration,' published in 1690, alludes to their having been driven to take the sacrament for the sake of their places, or "to obtain licences to sell ale."

The next act of parliament on the subject passed in the year 1729, when the statute 2 Geo. II. c. 28, § 11, after reciting that "inconveniences had arisen in consequence of licences being granted to alehouse-keepers by justices living at a distance, and therefore not truly informed of the occasion or want of alehouses in the neighbourhood, or the characters of those who apply for licences, enacts that "no licence shall in future be granted but at a general meeting of the magistrates acting in the division in which the applicant dwells." At this period the sale of spirituous liquors had become common; and in the statute which we have just mentioned a clause is contained, placing the keepers of liquor or brandy-shops under the same regulations as to licences as alehouse-keepers. The eagerness with which spirits were consumed at this period by the lower orders of the people in England, and especially in London and other large towns, appears to have resembled rather the brutal intemperance of a tribe of savages than the habits of a civilized nation. Various evasions of the provisions of the licensing acts were readily suggested to meet this inordinate demand; and in 1733 it became necessary to enforce, by penalty, the discontinuance of the practice of "hawking spirits about the streets in wheelbarrows, and of exposing them for sale on bulks, sheds, or stalls." (See 6 Geo. II. c. 11.) From this time alehouses became the shops for spirits, as well as for ale and beer; in consequence of which their due regulation became a subject of much greater difficulty than formerly; and this difficulty was increased by the growing importance of a large consumption of these articles to the revenue. Besides this, all regulations for the prevention of evils in the management of alehouses were now embarrassed by the arrangements which had become necessary for the facility and certainty of collecting the Excise duties.

In 1753 a statute was passed (26 Geo. II. c. 31) by the provisions of which, with some trifling modifications by later statutes, the licensing of alehouses continued to be regulated for the remainder of the last century. This statute, after reciting that "the laws concerning alehouses, and the licensing thereof, were insufficient for correcting and suppressing the abuses and disorders frequently committed therein," contains, among others, the following enactments:—1. That upon granting a licence to any person to keep an alehouse, such person should enter into a recognizance in the sum of 10*l.* with sufficient sureties, for the maintenance of good order therein. 2. That no licence should be granted to any person not licensed the preceding year, unless he produced a certificate of good character from the clergyman and the majority of the parish officers, or from three or four respectable and substantial inhabitants, of the place in which such alehouse is to be. 3. That no licence should be granted but at a meeting of magistrates, to be held on the 1st of September in every year, or within twenty days afterwards, and should be made for one year only. 4. Authority is given to any magistrate to require an alehouse-keeper, charged upon the information of

any person with a breach of his recognizance, to appear at the next quarter-sessions, where the fact may be tried by a jury, and in case it is found that the condition of the recognizance has been broken, the recognizance is to be estreated into the Exchequer, and the party is utterly disabled from selling ale or other liquors for three years.

By a statute passed in 1808 (48 Geo. III. c. 143) a difference was introduced into the mode of licensing, not with a view to the internal regulation of alehouses, but for purposes connected with the collection of the revenue. The licence, which was formerly obtained from the magistrates, was, by that act, to be granted by the commissioners, collectors, or supervisors of Excise, under certain specific directions, and upon the production by the applicant of a previous licence or allowance, granted by the magistrates, according to the provisions of the former statutes respecting licensing.

The next act of parliament upon this subject was passed in 1822 (3 Geo. IV. c. 77), but as that statute continued in operation for only a few years, it is unnecessary to specify its provisions further than to notice that the preamble states the insufficiency of the laws previously in force respecting alehouses, and that one of its provisions is considerably to increase the amount of the recognizances required both from the alehouse-keeper and his sureties.

In 1828 a general act to regulate the granting of alehouse licences was passed (9 Geo. IV. c. 61), which repealed all former statutes on this subject, and enacts a variety of provisions, of which the following are the most important:—1. Licences are to be granted annually, at a special session of magistrates, appointed and summoned in a manner particularly directed, and to be called the General Annual Licensing Meeting, to be holden in Middlesex and Surrey, within the first ten days of March, and in every other place between the 20th of August and the 14th of September. Any person who is refused a licence may appeal to the quarter-sessions; and no justice is to act in an appeal who was concerned in the refusal of the licence. 2. Every person intending to apply for a licence must affix a notice of his intention, with the name, abode, and calling of the applicant, on the door of the house which he wishes to open as an alehouse, and on the door of the church or chapel of the place in which it is situated, on three several Sundays, and must serve a copy of it upon one of the overseers, and one of the peace-officers. 3. If a riot or tumult happens, or is expected to happen, two justices may direct any licensed alehouse-keeper to close his house; and if this order be disobeyed, the keeper of the alehouse is to be deemed not to have maintained good order therein. 4. The licence is subjected to an express stipulation that the keeper of the house shall not adulterate his liquors; that he shall not use false measures; that he shall not permit drunkenness, gaming, or disorderly conduct in his house; that he shall not suffer persons of notoriously bad character to assemble therein; and that (except for the reception of travellers) he shall not open his house during divine service on Sundays and holidays. 5. Heavy and increasing penalties for repeated offences against the tenor of the licence are imposed; and magistrates at sessions are empowered to punish an alehouse keeper, convicted by a jury of a third offence against the tenor of his licence, by a fine of 100*l.*, or to adjudge his licence to be forfeited.

Under the Metropolitan Police Act (2 & 3 Vict. c. 47), which under certain conditions may be extended to within fifteen miles of Charing Cross, all public-houses are to be shut on Sundays until one o'clock in the afternoon, except for refreshment of travellers; and publicans are prohibited from supplying distilled liquors to persons under sixteen years of age, under a penalty for the first, second, and third offences of 20*l.*, 40*l.*, and 50*l.* This latter clause does not appear to be enforced.

The closing of public-houses on Sunday mornings within the metropolitan police district has met with general approbation. Taking the average of the first five months in the years 1838-39, the total number of drunken persons apprehended on the Sunday by the police was 2301, and in the first five months after the new act

came into operation the number was 1328. The decrease was most marked in the police divisions situated in the centre of the metropolis. In the Holborn division it was 48 per cent.; in the Covent Garden division, 52 per cent.; and in the St. James's division, 79 per cent. (*Statement of the Commissioners of Police*, vol. iv., p. 268, of *Journal of London Statistical Society*.)

The next act of parliament which relates to the regulation of alehouses is the "act to permit the general sale of beer and cider by retail in England." (1 Will. IV. c. 64.) The following are the most material provisions of this statute:—1. That any householder, desirous of selling malt liquor, by retail, in any house, may obtain an Excise licence for that purpose, to be granted by the Commissioners of Excise in London, and by collectors and supervisors of Excise in the country, upon payment of two guineas; and for cider only, on payment of one guinea. 2. That a list of such licences shall be kept at the Excise Office, which is at all times to be open to the inspection of the magistrates. 3. That the applicant for a licence must enter into a bond with a surety for the payment of any penalties imposed for offences against the act. 4. That any person licensed under the act, who shall deal in wine or spirits, shall be liable to a penalty of 20*l.* 5. That in cases of riot, persons so licensed shall close their houses upon the direction of a magistrate. 6. That such persons suffering drunkenness or disorderly conduct in their houses shall be subject to penalties which are to be increased on a repetition of the offences, and the magistrates before whom they are convicted may disqualify them from selling beer for two years. 7. That such houses are not to be open before four in the morning nor after ten in the evening, nor during divine service on Sundays and holidays.

The effect of the above statute is to withdraw the authority of granting licences to houses opened for the sale of ale, beer, and cider only, from the local magistrates, in whose hands it had been exclusively vested for nearly 300 years, and to supersede their direct and immediate superintendence and control of such houses. It creates a new class of alehouse keepers distinct from those who are licensed by the magistrates, and who only are called licensed victuallers. The consequence of the facility of obtaining licences upon a small pecuniary payment, and without the troublesome and expensive process directed by former statutes, was, as might be expected, a rapid and enormous multiplication of alehouses throughout the country.

But whatever might have been the state of these houses under the first Beer Act (1 Wm. IV. c. 64), there is no reason to believe that under existing acts they are now any worse than the licensed public-houses. By 4 & 5 Wm. IV. c. 85, the preamble of which recited that much evil had arisen from the management of houses in which beer and cider are sold by retail under 1 Wm. IV. c. 64, it was enacted that each beer-seller is to obtain his annual Excise licence only on condition of placing in the hands of the Excise a certificate of good character signed by six rated inhabitants of his parish, none of whom must be brewers or maltsters. Such a certificate is not to be required in towns containing a population of 5000 and upwards; but the house to be licensed is to be one rated at 10*l.* a year. This act makes a difference between persons who sell a liquor to be drunk on the premises and those who sell it only to be drunk elsewhere.

By a Treasury order, beer sold at or under 1½*d.* a quart may be retailed without a licence: the officers of Excise are empowered to enter such houses and to examine all beer therein.

The act 3 & 4 Vict. c. 61, amends both of the above acts. It provides that a licence can only be granted to the real occupier of the house in which the beer or cider is to be retailed; and it raises the rated value of such house to 15*l.* in towns containing a population of 10,000 and upwards; in towns of betwixt 10,000 and 2500, to 11*l.*; and in towns of smaller size the annual value is to be not less than 8*l.* Every person applying for a licence is to produce a certificate from the overseer of his being the real occupier of the house, and of the amount at which it is rated. A refusal

to grant this certificate renders the overseer liable to a penalty of 20*l.*; and any person forging a certificate, or making use of a certificate knowing it to be false, is to forfeit 50*l.*

The hours for opening and closing beer-shops are now regulated by the above act. In London and Westminster, and within the boundaries of the metropolitan boroughs, they are not to be opened earlier than five in the morning, and the hour of closing is twelve o'clock, but eleven o'clock in any place within the Bills of Mortality, or any city, town, or place not containing above 2500 inhabitants; and in all smaller places, five o'clock is the hour for opening and ten o'clock for closing. On any Sunday, Good Friday, or Christmas-day, or any day appointed for a public fast or thanksgiving, the houses are not to be opened before one o'clock in the afternoon.

The houses of alehouse-keepers, otherwise called licensed victuallers, are not exempt from the window duty; but if the bar-room be used solely for the sale of their commodities, and not for the entertainment of guests, the window of that room is to be exempt from duty. (Communication from Chancellor of Exchequer to Liverpool Victuallers' Society, April, 1844.) The licensed victuallers are liable to have soldiers billeted upon them, and they consider the non-exemption from the window duty a grievance, as other traders, who have no such burdens, enjoy the benefits of this exemption. The keepers of beer-shops who sell ale to be consumed on the premises, are liable to have soldiers billeted on them.

The number of licensed victuallers in England and Wales has increased from 50,947 in 1831 to 57,698 in 1843. The only year which shows a decrease on the preceding year was 1842, the number in 1841 having been 57,768. In 1840 there were 7610 houses occupied by licensed victuallers, the rental of which was under 8*l.*; 10,769 houses under 10*l.*; 20,185 under 20*l.*; and 5335 at and above 50*l.*

The number of beer-shops of both classes was 44,134 in 1836, and they have gradually declined to 36,298 in 1842, and 35,479 in 1843. In 1836 there were 39,104 retailers of beer to be consumed on the premises; in 1842 only 31,821; and in 1843 the number was 31,227. In 1839, after a gradual increase in the preceding three years, the number of retailers who sold beer for consumption elsewhere than on the premises was 5941, and the number has since regularly decreased to 4477 in 1842, and 4252 in 1843.

The retailers in cider and perry under the acts for the sale of beer were 1913 in number in 1835, and only 438 in 1842.

Number of licensed victuallers and beer retailers in England and Wales who brewed their own beer, in 1843:—Licensed victuallers, 26,806; retailers of beer to be consumed on the premises, 12,761; retailers of beer not to be consumed on the premises, 1245. Malt consumed by the above:—By licensed victuallers, 7,567,945 bushels; by retailers for consumption on the premises, 2,761,672; by retailers for consumption elsewhere, 397,188 bushels. In the Country Excise Collections one half the licensed victuallers brew; and in London there are only 10 who brew out of 4344.

The victuallers and keepers of beer-shops who do not brew are of course supplied by brewers, of whom there were 2318 in England and Wales in 1843, who used 15,962,323 bushels of malt; rather more than one-third of this quantity of malt (5,349,143 bushels) being consumed by 98 brewers in the London Excise Collection. Since 1785 brewers of beer for sale have been compelled to take out an Excise licence, the cost of which is in proportion to the quantity brewed. In 1840, the number of brewers of strong beer not exceeding 20 barrels was 8232; above 20 and under 50 barrels, 8821; above 50 and under 100 barrels, 10,424; above 100 and under 1000 barrels, 16,634; exceeding 1000 barrels, 1607.

In October, 1830, the duty of 9*s.* per barrel on strong beer, and 1*s.* 11½*d.* on table and small beer, was abolished. In the previous year the consumption of England and Wales was 6,559,210 barrels of strong and 1,530,419 barrels of small beer, which allows for upwards of 21 gallons per head on the year's consumption. The produce of the duty was 3,217,812*l.* With the same rates of duty

the produce of this branch of revenue was only 79,414*l.* in Scotland: the beer duty in Ireland ceased in 1795. The repeal of taxes to an amount exceeding three millions a year on such an article as beer, while heavy taxes existed on raw materials, the abolition of which would have increased the demand for labour, has been condemned by many economists.

In 1843 the declared value of 141,313 barrels of ale and beer exported was 343,740*l.*

ALE-TASTER. [ALE-CONNER.]

ALIEN. An alien is one who is born out of the ligeance (allegiance) of the king. (Littleton, 198.) The word is derived from the Latin *alienus;* but the word used by the English or other law writers in Latin is *alienegena.* The condition of an alien, according to this definition, is not determined by place, but by allegiance [ALLEGIANCE], for a man may be born out of the realm of England, or without the dominions of the king, and yet he may not be an alien. It is essential to alienage that the birth of the individual occurred in a situation and under circumstances which gave to the king of this country no claim to his allegiance.

The following instances will serve to illustrate the description of an alien. The native subject of a foreign country continues to be an alien, though the country afterwards becomes a part of the British dominions. Thus, persons born in Scotland *before* the union of the crowns by the accession of James I., were aliens in England even *after* that event; but those who were born afterwards were adjudged to be natural-born subjects. This question was the subject of solemn discussion in the reign of that prince; and the reported judgment of the court has guided lawyers in all similar controversies. Persons born in those parts of France which formerly belonged to the crown of England, as Normandy, Guienne, and Gascony, were not considered as aliens so long as they continued so annexed; and, upon the same principle, persons born at this day in any of our colonial possessions are considered native subjects. A man, born and settled at Calais whilst it was in the possession of the English, fled to Flanders with his wife, then pregnant; and there, after the capture of Calais by the French, had a son: the issue was held to be no alien. If the king's enemies invade the kingdom, and a child is born among them, the child is an alien.

The children of ambassadors, and other official residents in foreign states, have always been held natives of the country which they represent and in whose service they are. This rule prevailed even at a time when the law of alienage was stricter than it now is. It has been since so far extended by various enactments, that all children born abroad, whose fathers or grandfathers on the *father's* side were natural subjects, are now deemed to be themselves natural-born subjects, unless their fathers were liable to the penalties of treason or felony, or were in the service of a prince at war with this country. (25 Ed. III. st. 2; 7 Anne, c. 5; 4 Geo. II. c. 21; 13 Geo. III. c. 21.)

The children of aliens born in England are, as a general rule, the same as natural-born subjects: they are entitled to the same rights and owe the same allegiance. But the children of a British mother by an alien are aliens if they are born out of the king's allegiance.

It follows from the general principles of our law that a man may be subject to a double and conflicting allegiance; for, though he may become a citizen of another state (the United States of America, for instance), or the subject of another king, he cannot divest himself of the duty which he owes to his own. So that, in the event of a war between the two states, he can take no active part on behalf of one, without incurring the penalty of treason in the other. This predicament may occur without any fault of the party; for the children of aliens are (except under peculiar circumstances) natural subjects of the state in which they were born: yet they may still be regarded as natural-born subjects of the state to which their parents owed allegiance.

An alien cannot hold lands in England even for a term of years, except in certain circumstances. If he purchase lands, he takes them, but they are forfeited to the

king after the fact of purchase has been ascertained by a jury. These disabilities of an alien are founded on the nature of the tenure of land in England, which always implies fealty to some superior lord. It follows from the notion of an alien, that he cannot take land by descent, nor can he be entitled to land by the courtesy of England. An alien woman is not entitled to dower of her husband's lands, unless she has been either made a denizen or naturalized. It is also said that she is entitled to dower if she has married an Englishman by licence from the king. (Cruise, *Digest*, i. 159.) It has been said that an alien cannot take land by devise; but there seems to be no legal principle which shall prevent him from *taking* by devise, any more than from taking by purchase: the only question is, for whose benefit he *takes*, for he cannot hold it for his own benefit. (Ld. Hardwicke, Knight *v.* Duplessis, 2 Ves. 360.) An alien cannot be returned to serve on a jury, except where he is one *de medietate linguae*, that is, a jury of which one-half are foreigners.

An alien may possess himself of goods, money in the funds, and other personal effects, to any extent. The law has, from a very early period, recognised his right to reside without molestation within the realm for commercial purposes. "All merchants shall have safe and secure conduct to go out and to come into England; and to stay there, and to pass as well by land as by water, to buy and sell by the ancient and allowed customs, without any evil tolls, except in time of war, or when they are of any nation at war with us." (*Magna Charta*, art. 48.) An alien merchant enjoys the right to occupy a house and premises, and may hold a lease for years for the convenience of merchandize, yet if he leaves the realm or dies, in the one case his assignees, and in the other case his executors or administrators, cannot have the lease, but it goes to the crown. It is usual in such cases for the crown to make a grant of the forfeited interest to some person who is the best entitled to it. By 3 & 4 Wm. IV. c. 54 and c. 55, aliens cannot hold British registered shipping nor shares therein. An alien who is settled in England as a merchant can only invest capital in foreign ships, which, in compliance with the navigation laws of other states, are of necessity manned with foreign seamen; and by a provision in our navigation laws a foreign ship can only import the productions of the country where she is registered. A naturalized person cannot enjoy the advantages of a British subject under commercial treaties with foreign countries until seven years after he has been naturalized. An alien cannot be a member of parliament, nor can he vote in the election of a member of parliament. (2 & 3 Wm. IV. c. 45.) But it has been established that the occupation of a dwelling-house by an alien gained him a settlement. (Rex *v.* Eastbourne, 4 East, 103.) The Municipal Corporations Act (5 & 6 Wm. IV. c. 76, s. 4) debars aliens from exercising the municipal privileges of a burgess.

The statute of 32 Hen. VIII. c. 16, which makes void all leases of dwelling-houses or shops to alien artificers or handicraftsmen, and imposes a penalty of 100*s.* for granting such lease, is still unrepealed. An alien can and could from a very early period bring an action or suit in the English courts in respect of personal property or contracts. An alien may dispose of his property by will. The *droit d'aubaine*, or right of succeeding to the effects of a deceased alien, formerly claimed by the crown of France, never prevailed in this country. Nor was it customary to enforce it even in France, except as against the natives of a state in which a similar right was exercised. For some time previous to its abolition by the first Constituent Assembly in 1791, it was generally stipulated by foreign countries, in their treaties with France, that their subjects should be exempt from the law. [AUBAINE.] This doctrine of reciprocity was adopted by the French Code (*Code Civil*, art. 726), but was abrogated in 1819, so far as the right of succession is concerned: so that aliens are now on the same footing in this respect with native Frenchmen throughout that kingdom. Aliens who are subject to any criminal proceeding in our courts of justice are in most cases entitled to trial by a jury *de medietate linguae*.

The disabilities of aliens may be partially removed by the king's letters-patent constituting the party a free denizen. From the date of the grant he is entitled to hold land, and transmit it to his after-born children, and to enjoy many other privileges of a native subject. But the most effectual method of naturalizing an alien is by act of parliament, called a Naturalization Bill, by which he is admitted to every right of a natural-born subject, except the capacity of sitting in parliament or the privy council, or of holding grants and offices of trust under the crown; an exclusion dictated by the jealous policy of the legislature on the accession of the House of Orange. [DENIZATION; NATURALIZATION.]

The rights of aliens, enumerated above, must be understood to apply only to alien *friends*. Alien *enemies*, or subjects of a foreign state at war with this country, are in a very different condition, and may be said to possess very few rights here.

As examples of the policy which has at different times been pursued in this country with reference to aliens, the following historical notices may be interesting:—

Magna Charta stipulates, in the article already cited, for the free access of foreign merchants for the purposes of trade, and its provisions were enforced and extended under the reigns of succeeding princes.

In the eighteenth year of Edward I. the parliament rolls contain a petition from the citizens of London, "that foreign merchants should be expelled from the city, because they get rich, to the impoverishment of the citizens;" to which the king replies, that "they are beneficial and useful, and he has no intention to expel them."

In the reign of Edward III. several beneficial privileges were conferred on aliens for the encouragement of foreign trade.

Under Richard II. and his successor statutes were made imposing various restraints on aliens trading within the realm, and especially prohibiting internal traffic with one another. Similar restrictions were introduced in the reign of Richard III., chiefly with a view to exclude them from retail trade; and in that of Henry VIII. violent insurrections against aliens were followed by repeated statutes, reciting the mischievous consequences attributed to the influx of foreigners, and laying greater impediments in the way of their settlement within the realm. Several acts of this description are still in force, though they have fallen into practical disuse; but the courts of law have always put on them a construction the most favourable to foreign commerce, agreeably to the opinion of Lord Chief Justice Hale, that "the law of England hath always been very gentle in the construction of the disability, and rather contracting than extending it severely." (Ventris's *Reports*, vol. i. p. 427.)

In the reign of James I. the king was strongly petitioned to adopt exclusive measures against the aliens, who had flocked into the kingdom from the Low Countries; but James, though he acquiesced to a certain extent in the object of the petitioners, seems by no means to have participated in their feelings of enmity to aliens; for he professes his intention "to keep a due temperament between the interests of the petitioners and the foreigners;" and he especially commends "their industrious and sedulous courses, whereof he wished his own people would take example."

In the reign of Charles II. aliens were invited to settle in this country, and to engage in certain trades, by an offer of the privileges of native subjects. (15 Charles II. c. 15.) This statute was repealed by 12 & 13 Wm. III. c. 2; but there is an unrepealed act of 6 Anne, which naturalizes all foreigners who shall serve for two years on board any ship of her majesty's navy or a British merchantship.

In the early part of the last century (1708) a bill was brought into parliament for the general naturalization of all foreign Protestants upon their taking certain oaths and receiving the sacrament in any Protestant church, and it passed notwithstanding the strenuous opposition of the city of London, who represented that they would sustain loss by being obliged to remit certain dues which aliens were obliged to pay. After remaining in opera-

tion for three years, it was repealed on a suggestion of its injurious effects upon the interests of natural-born subjects; but a previous bill for effecting this object was rejected by the Lords. The reasons for and against the measure will be found in the fourth volume of Chandler's *Commons' Debates*, p. 119-122. In 1748 and 1751 a measure similar to the act of 1708 was brought forward, and in 1751 it was read a second time, but was dropped in consequence of the death of the Prince of Wales, which disarranged the public business.

Upon a review of the history of our policy, the inference seems to be, that although the maxims prevalent in our courts of law have been generally favourable to aliens, and although the government appear to have been at all times sensible of the advantages resulting from a liberal reception of foreign settlers engaged in trade, yet popular prejudices have been on the whole successfully exerted in impressing upon the legislature a more jealous and exclusive system.

The Alien Acts (33 Geo. III. c. 4; 34 Geo. III. c. 43, 67, and others) were passed entirely from political motives, and were mainly enacted on account of the great number of foreigners who came to England in 1792 and 1793. There is reason to believe that the crown has always had the power of banishing aliens from the realm, which these acts, however, expressly gave to it: at all events the power has undoubtedly been often exerted; and it seems almost to be included in the ampler prerogative of declaring war against the whole, or any part, of a foreign state. However, either from want of recent authentic precedents, or from a desire to accompany the measure with provisions not within the ordinary exercise of the prerogative, this power has not been exercised of late years without the sanction of parliament. In 1827 a measure was introduced (7 Geo. IV. c. 54) for the general registration of all aliens visiting this country, and every foreigner was required to present himself at the Alien-office. This act was repealed by 6 Wm. IV. c. 11, but new provisions of a similar character were introduced. By one clause masters of vessels arriving from foreign parts are to declare what aliens (mariners navigating the vessel excepted) are on board or have landed, under a penalty, for omission or for false declaration, of 20*l.*, and 10*l.* for each alien omitted. Every foreigner on landing is required immediately to exhibit any passport in his possession to the chief officer of customs at the port of debarkation, and to state to him, either verbally or in writing, his name, birth-place, and the country he has come from, under a penalty, for neglect or refusal, of 2*l.* The officer of customs is to register this declaration, deliver a certificate to the alien, and transmit a copy of the declaration to the secretary of state. On leaving the country the alien is required to transmit to the secretary of state the certificate granted him on landing. The act does not affect foreign ministers or their servants, nor aliens under fourteen years. The proof of non-alienage lies on the person alleged to be an alien. Under the former act aliens were required to present themselves at the Alien-office; but this is no longer necessary.

The registration clause is generally disregarded by foreigners, and is never enforced, for there is no provision in the act for recovering the penalty. In 1842, out of 11,600 foreigners who were officially reported to have landed, 6084 only registered according to the act; but in the same year, out of 794 who landed at Hull, only one registered; at Southampton, out of 1174, not one; and of those who landed at London, not one-half. At Liverpool no return was kept of the number of foreigners who landed, and there was no instance of one who registered. There are two alien clerks at the port of London, and one at Dover, but at other ports the business is done by the officers of customs. In the session of 1843 a bill was introduced for increasing the facilities afforded for the denization and naturalization of foreigners; but it met with opposition from the government, and was thrown out without a division.

Under the Act 7 Geo. IV. c. 54, the number of foreigners who arrived and departed during the year was ascertained; but it is said that the papers have been destroyed. The returns under the census

of 1841 do not distinguish foreigners from British subjects born in foreign parts. The total number of foreigners and British subjects born abroad resident in Great Britain on the 6th of June, 1841, was 44,780, of whom 38,628 resided in England, and 19,931 of this number were returned in the counties of Middlesex and Surrey. The number of foreigners naturalized does not on an average exceed seven or eight a year, and the number who apply for letters of denization does not exceed twenty-five.

The same classes of persons who are aliens, according to the law of England, are aliens according to that of Scotland, and the statute law on the subject extends to that part of the empire. When an alien resident in Scotland wishes to acquire the privileges of a British subject, the same forms which, as above described, are applicable to England, are gone through with the same effect. They are consistent with the constitutional doctrine of the separate kingdom of Scotland, in which, anterior to the Union, it appears that letters of denization could give a portion, but an act of parliament only could communicate the whole of the privileges of a born subject of the crown. The institutional writers maintain that an alien cannot hold any kind of heritable property in Scotland, but in the books there are only two cases on the subject, and in one the general question was evaded; in the other an alien was found not to have a sufficient title to pursue a reduction of a conveyance of an estate. (Leslie *v.* Forbes, 9th June, 1749, M. 4636.) If the rule that aliens cannot hold heritage were strictly interpreted, it would affect property which all classes of persons are in the practice of holding in Scotland without molestation, but in the general case it would be difficult to find a form in which an alien's title could be brought in question. It is questioned whether an alien in Scotland who holds the statutory qualification may vote for a member of the House of Commons. The sheriffs, who are judges in the registration courts, have given conflicting judgments on this point.

The following are the laws as to aliens in France and the United States of North America, two countries with which Englishmen are more closely connected than any other:—

A child born in France, of foreign parents, may, within one year after he has attained the age of twenty-one, claim to be a Frenchman; if he is not then resident in France, he must declare his intention to reside there, and he must fix his residence there within one year after such declaration. An alien enjoys in France the same civil rights as those which Frenchmen enjoy in the country to which the alien belongs; but he enjoys the right of succession in France, although this right may not be granted to French citizens in his own country. An alien is allowed by the king's permission (ordonnance du roi) to establish his domicile in France; and so long as he continues to reside there, he enjoys all civil but not political rights; but this enjoyment ceases immediately the domicile is lost. After an uninterrupted residence during ten years, by permission of the king an alien may become naturalized. (*Code Civil*, liv. 1, tit. 1. s. 9.) A foreigner can buy and hold land in France without obtaining any permission from the crown or legislature.

Upon the recognition of the independence of the United States of North America by the treaty of Paris, 1783, the natural-born subjects of the king of England who adhered to the United States became aliens in England; and it was decided that they became incapable of inheriting lands in England. It had been previously decided in America that natives of Great Britain were aliens there, and incapable of inheriting lands in the United States. Kent defines an alien to be "a person born out of the jurisdiction of the United States;" but this definition is not sufficiently strict, for the son of an alien, which son is born in the United States, is also an alien.

Congress has several times altered the law respecting naturalization, but chiefly as to the period of previous residence. In 1790 only two years' residence was required; in 1795 the term was prolonged to five years; and in 1798 to fourteen years. In 1802 the period of five years was again adopted, and no alteration in this respect has taken place. The benefits

of naturalization have always been confined to "free white persons;" persons of mixed blood are excluded, as well as the African and other pure races, whether black or copper-coloured. At what point a person of mixed blood could claim naturalization is doubtful. By an old law of Virginia, which was not repealed up to a recent period, a person with one-fourth of negro blood is deemed a mulatto. An alien in the United States cannot have full and secure enjoyment of freehold of land; and if he does, the inheritance escheats. He can neither vote at elections nor hold public offices. Two years at least before he can obtain the privileges of a natural-born citizen he must appear in one of certain courts, or before certain officers, and declare on oath his intention to become a citizen of the United States, and to renounce his allegiance to his own state or prince. When the two years have expired, and if the country to which the alien belongs is at peace with the United States, he is next required to prove to the court, by his oath as well as otherwise, that he has resided five years at least in the United States, and one year in the state where the court is held; and he must show that he is attached to the principles and constitution of the United States, and is of good moral character. The court then requires that he should take an oath of fidelity to the constitution, and likewise an oath by which he renounces his native allegiance. He must also renounce any title or order of nobility, if he has any. The children of persons naturalized according to this form, if they were minors at the time, are deemed citizens if they are then dwelling in the United States. If an alien dies in the interval between having taken the preliminary steps towards his naturalization and the time of his admission, his widow and children become citizens. If an alien resided in the United States previously to the 18th of June, 1812, the preliminary notice of two years is not necessary, nor if he be a minor under 21 and has resided in the United States during the three years preceding his majority. In the case of an alien who has arrived in the United States after the peace of 1815, it is required that he should not at any time have left the territory during the five years preceding his admission to citizenship. A naturalized alien immediately acquires all the rights of a natural-born citizen, except eligibility to the office of President of the United States and of governor in some of the states. A residence of seven years, after naturalization, is necessary to qualify him to be a member of Congress. (Kent's *Commentaries*, vol. ii. p. 50-75.)

In 1804 Congress passed an act supplementary to the act of 1802, which contains a clause respecting the children of American citizens born abroad, but it applies only to the children of persons who then were or had been citizens; and Kent remarks (*Commentaries*, vol. ii. p. 53) that the rights of the children of American citizens born abroad are left in a precarious state; and in the lapse of time there will soon be no statute which will be available, in which case the English common law will be the only principle applicable to the subject.

Before the adoption of the present constitution of the United States, the several states had each the privilege of conferring naturalization. Each state can still grant local privileges. There is a considerable diversity in the laws of different states respecting aliens. By a permanent provision in the state of New York, an alien is enabled to take and hold lands in fee, and to sell, mortgage, and devise (but not to demise and lease the same), provided he has taken an oath that he is a resident of the state, and has taken the preliminary steps towards becoming a citizen of the United States. There are similar provisions in several of the other states. In New York resident aliens holding real property are liable to be enrolled in the militia, but they are not qualified to vote at any election, of being elected to any office, or of serving on a jury. In North Carolina and Vermont the constitution provides that every person of good character who comes into the state and settles, and takes an oath of allegiance, may hold land, and after one year's residence he becomes entitled to most of the privileges of a natural-born citizen. In Connecticut the superior

court, on the petition of any alien who has resided in the state six months, has the power of conferring upon him the same privileges, in regard to holding land, as if he were a natural-born citizen. In Pennsylvania aliens may purchase lands not exceeding 5000 acres, and hold and dispose of the same as freely as citizens. In Georgia aliens can hold land, provided they register their names in the Superior Court. No alien can act as executor or administrator in this state. In Kentucky, after a residence of two years, an alien can hold land. In Indiana, Missouri, and Maryland the disqualification of an alien holding land is done away with on his giving notice of an intention to become a citizen. Most, if not all, of the state legislatures are in the habit of granting to particular aliens, by name, the privilege of holding real property. ("Law relating to Aliens in United States," in *Boston Almanac*, 1835.)

In the States generally, perhaps in all, as in England, the alienage of a woman does not bar her right of dower.

The following information is abstracted from evidence given by Harvey Gem, Esq., before the Select Committee on aliens, in 1843, and the information was stated to have been obtained from the ambassadors or ministers of the different Powers in London:—

In Prussia, from the moment when an alien becomes a resident and places himself under the protection of the laws, he enjoys the same rights as a natural-born subject, and not only has he a right to vote in the election of members to the Provincial States, but he is also eligible himself as a member.

In Saxony, by a law passed in 1834, an alien may acquire the privileges of a natural-born subject by right of domicile, granted by the local authorities of each district, or by the purchase of real property, and in towns by obtaining the freedom of the corporation. In the two latter cases, the alien must have been in possession of his real property or of his freedom for five years, during which period he must have resided in the place where the property is, or in the town of which he has obtained the freedom. The right of voting, eligibility as a representative of the Chambers of the Kingdom, &c., depend upon the nature and value of the real property acquired, whether a manor, a house in a town, &c.

In Bavaria aliens can possess landed property, without the condition of residence, but they are liable to the duties which attach to the property. Naturalization is obtained either by marriage of a foreign woman with a Bavarian, by domicile and renouncing foreign allegiance, or by royal decree; but a residence of six years is necessary before the full citizenship can be obtained. The privileges of an alien in Bavaria depend in some degree on the policy of the state of which he is a subject towards foreigners in general or Bavarians in particular.

In Würtemberg an alien who wishes to be naturalized, first purchases landed property in or near the place where he intends to settle, by which he obtains the consent of the local authorities to reside among them (bürger-recht). These conditions having been fulfilled and the sanction of government obtained, the alien acquires the Staats-bürger recht, which gives him all the privileges of a natural-born subject, and with them its obligations, as liability to the military conscription, &c. The bürger-recht may give an alien all the municipal rights of a citizen in a town, while, as respects the Staats-bürger recht, which makes him a citizen of the state, he may still be an alien.

In Hanover naturalization is acquired in one or other of the following ways: by marriage of a foreign woman with a Hanoverian subject; by the adoption by a Hanoverian of a foreigner as his child; by holding any office under the government; by becoming a member of a commune; by the purchase of a residence or freehold in any commune; by the authority of the State, independently of the will of the commune; and by a residence of five consecutive years in any commune with the express approbation of the bailiff or mayor—the conditions in the two last cases being the possession of sufficient means of subsistence and an irreproachable character.

In Austria a residence of ten years is

sufficient in all cases to obtain naturalization. Whoever holds any office, either civil or military, under the crown, is thereby naturalized. Merchants or manufacturers who come to settle in the country with their families can obtain naturalization at once, if they are of good reputation and not in needy circumstances. Naturalization confers, without any exception, all the rights and privileges of natural-born subjects.

The Act of the German Confederation, Art. 18, gives to every German the right of holding civil and military offices in the different states of the Confederation.

In Denmark, every foreigner who settles there with the intention of remaining, and who owns land of the value of 30,000 crowns, or houses in the towns of the value of 10,000 crowns, or a capital of 20,000 crowns in trade, acquires by that alone the right of demanding letters of naturalization. Children born in Denmark of foreign parents, and persons naturalized, are eligible to all public offices, with one exception, which is this, a naturalized foreigner does not become eligible as a deputy of the provincial States until he has resided for five years in the European dominions of Denmark, and renounced his foreign allegiance.

In the Hanseatic towns naturalization is acquired in the following manner:—In Lübeck and its territory, any person of respectability, especially after a prolonged residence, is admitted as a citizen without difficulty, on showing, if required, that he has sufficient means of subsistence. Letters of naturalization confer all the rights which natural-born subjects enjoy. In Hamburg an alien cannot hold landed property, but any persons taking up their bonâ fide residence there may obtain letters of naturalization on payment of a moderate sum (a few pounds, it is stated), upon which they enjoy all the rights of native citizens, with the exception of not being eligible to the order of the bürgerschaft; but the restrictions in this case apply only to age and some other qualifications, which are equally applicable to native citizens. No business can be transacted by foreigners, until they have obtained the privilege of citizenship, and become members of some one of the guilds. Any foreigner may become a citizen by purchase. Jews cannot become citizens. In Bremen an alien obtains the rights of citizenship for a money payment, and by becoming a member of a commune. In Frankfort naturalization is obtained by gift for public services, by marriage, or by purchase, if the person desirous of becoming a citizen can give satisfactory references as to character, station, and property.

In Sardinia the power of conferring naturalization rests entirely with the king, and is never refused on any bonâ fide application: a naturalized person enjoys all the privileges of a natural-born subject.

In Portugal an alien of not less than twenty-five years of age can obtain letters of naturalization after two years' residence, and provided he has the means of subsistence. The two years' residence is dispensed with if the alien has married a Portuguese woman; or has opened or improved a public road; embarked money in trade; improved any branch of arts; introduced any new trade or manufacture; or otherwise performed some service of public utility.

In Belgium an alien cannot purchase or hold land. There are two kinds of naturalization, the petite naturalization and the grande naturalization. The first gives the alien some advantages, as the right to sue, &c.; and the second, which is an act of the legislature, confers political privileges in addition.

In Switzerland naturalization is conferred in some cantons by the legislature, and in others by the executive. In Tessin a naturalized foreigner can only enjoy the full rights of citizenship after five years have elapsed from the date of his naturalization. In Thürgau no one can hold any office under the government unless he has been a burgess of the canton at least five years. In Berne, Zürich, Vaud, Geneva, and most of the cantons, an alien obtains the full citizenship from the date of his naturalization.

In Russia no foreigner, who does not become a "perpetual subject," can enjoy the rights and privileges attached to the guild of merchants. The commercial rights belonging to merchants are enjoyed in their character as guests, or as

itinerant merchants. A foreigner who imports goods must sell them to Russians only.

ALIMONY (from the Latin *alimonium* or *alimonia*, a word which is used by the classical writers, and signifies "maintenance or support"). By the law of England a wife is presumed to have surrendered the whole of her property to her husband upon marriage, and consequently to be entirely dependent upon him for her future maintenance. Upon this principle, it is reasonable that if a separation takes place, the wife should have a portion of her husband's estate allotted to her for her subsistence; and this allotment, when made by the ecclesiastical courts, is termed "alimony." The right of a wife to this provision depends, however, entirely upon the truth of the presumption, that she has not sufficient means, independently of her husband, to support her in her appropriate station in life; for in cases where she has a separate and sufficient income beyond the husband's control, the wife is not entitled to alimony.

Alimony, in common with other subjects of matrimonial litigation, falls properly under the exclusive cognizance of the ecclesiastical courts; for though courts of equity have not unfrequently decreed a separate maintenance resembling alimony, yet their interference in such cases seems to have proceeded upon the ground of enforcing some express agreement between the parties, and is not founded upon the right of the wife to a portion of her husband's estate, resulting from the general principle above stated. In the ecclesiastical court, the allotment of alimony is incidental to a decree of divorce *a mensa et thoro* upon the ground of cruelty or adultery on the part of the husband. It may be either temporary or permanent: in the first case, while the proceedings in the suit for a divorce are depending, the court will, generally speaking, allot alimony to the wife *pendente lite*, or during the continuance of litigation; and in the second case, when a decree of divorce has been obtained on either of the above grounds, a permanent provision may be given to her; in both cases the allotment is made in the form of a st'pend for her maintenance from year tc year, and is proportionate to the estate of the husband.

The amount of alimony depends wholly upon the discretion of the court, which is exercised according to the circumstances of each particular case. In forming their estimate in this respect, the courts have held that, after a separation on account of the husband's misconduct, the wife is to be alimented as if she were living with him as his wife; they attend carefully to the nature as well as to the amount of the husband's means, drawing a distinction between an income derived from property and an income derived from personal exertion. The station in life of both parties, and the fortune brought by the wife, are also considered; and much stress is laid upon the disposal of the children and the expense of educating them. The conduct of the parties forms also a very material consideration: where the wife has eloped from her husband, or where the sentence of divorce proceeds upon the ground of her adultery, the law will not compel the allowance of alimony. In assigning the amount of alimony in order to discourage vexatious litigation, as well as upon the just principle that innocence of imputed misconduct is to be presumed until the contrary is proved, alimony during the continuance of a suit is always much less in amount than permanent alimony. Thus in the former, the proportion usually allowed is one-fifth of the net income of the husband; in the latter, after a charge of cruelty or adultery on the part of the husband has been established, a moiety of the whole income is frequently given. This seems to be the result of numerous cases in which the amount of alimony has been decided; but no general rule can be laid down upon this subject.

The assignment of alimony during the continuance of a suit will not discharge the husband from liability for his wife's contracts; but when the court has allotted her a permanent maintenance upon the termination of a suit, the wife is liable for her own contracts, and the husband is wholly discharged from them. On this ground, and with a view to the protection of the husband, the ecclesiastical court has sometimes granted alimony in cases

where the wife, by her own profligacy or extravagance, has thrown enormous expense on her husband, and has thereby forfeited her equitable title to a subsistence from his estate.

The equivalent in Scottish law to the term alimony is aliment or alimentary allowance. Allowances coming under this character, or, as they may generally be described, periodical payments sufficient only for the bare support of the recipient, and made to him in the understanding that he requires such an allowance for his support, are not attachable by the process of arrestment [ARRESTMENT]. A wife is entitled to aliment from her husband when she is deserted by him, when she is judicially separated from him, and during the continuance of an action of divorce, whether at his or her own instance. She has no right to aliment in the case of a voluntary contract of separation. It is a general principle of the law of Scotland, that a person who by disease or otherwise is unable to support himself, is entitled to an alimentary allowance from the nearest relation he can prove capable of affording it, but the House of Lords have shown a disposition to restrict the operation of this principle. The father of an illegitimate child is bound to make an alimentary allowance in its favour, the amount and the time during which it is to continue depending on his rank and fortune.

ALLEGIANCE, or LIGEANCE, is defined by Coke thus:—"*Ligeance, à ligando*, is the highest and greatest obligation of duty and obedience that can be. Ligeance is the true and faithful obedience of a liegeman or subject to his liege lord or sovereign. Ligeantia est vinculum fidei: ligeantia est legis essentia." The notion of Ligeance, or Allegiance, is that of a bond or tie between the person who owes it and the person to whom it is due. After this definition, Coke gives a tabular view of the various kinds or degrees of allegiance (*Co. Lit.* 129 A). Allegiance is due from those who are natural-born subjects, and also from denizens and those who have been naturalized. A natural-born subject is called a natural liegeman, and the king is called his natural liege lord.

The allegiance of a subject, according to the law of England, is permanent and universal; he can, by no act of his own, relieve himself from the duties which it involves; nor can he by emigration, or any voluntary change of residence, escape its legal consequences.

An alien owes a local and temporary allegiance so long as he continues within the dominions of the king; and he may be prosecuted and punished for treason.

A usurper, in the undisturbed possession of the crown, is entitled to allegiance; and, accordingly, our history furnishes an instance in which a treason committed against the person of Henry VI. was punished in the reign of his successor, even after an act of parliament had declared the former a usurper.

An oath of allegiance has, from the earliest period, been exacted from natural-born subjects of these realms; but its form has undergone some variations. In its ancient form, the party promised "to be true and faithful to the king and his heirs, and truth and faith to bear of life and limb and terrene honour, and not to know or hear of any ill or damage intended him without defending him therefrom." The modern oath, enforced by statute since the Revolution, is of more simple form, and is expressed in more indefinite terms:—"I do sincerely promise and swear that I will be faithful and bear true allegiance to her majesty Queen Victoria."

The alteration of the form has not varied the nature of the subject's duty, which is, indeed, owing from him antecedently to any oath, and although he may never have been called upon to take it. The oath is imposed by way of additional security for the performance of services which are due from the subject from the time of his birth. The king also, according to the old law writers, is said to be *bound* to protect his liegeman or subject, because allegiance is a reciprocal tie (reciprocum ligamen); the protection of the king is assigned as the reason or foundation of the liegeman's duty. This language is by no means exact; but it seems to show that the notion of a contract is involved in the theory of allegiance, at least as it is explained by some law

writers. The king can, by proclamation, summon his liegemen to return to the kingdom, an instance of which occurred in 1807, when the King of England declared, by proclamation, that the kingdom was menaced and endangered, and he recalled from foreign service all seamen and sea-faring men who were natural-born subjects, and ordered them to withdraw themselves and return home, on pain of being proceeded against for a contempt. It was further declared that no foreign letters of naturalization could, in any manner, divest his natural-born subjects of their allegiance, or alter their duty to their lawful king.

By the old law of the land, every male subject of the age of twelve years (with certain exceptions) was bound to take the oath of allegiance when summoned to the courts called Leets and Tourns; and a variety of statutes, from the reign of Elizabeth down to the present century, have expressly required it from public functionaries and other persons before they enter upon their respective duties, or practise in their several professions. By 1 George I. c. 13, two justices of the peace, or other commissioners appointed by the king, may tender the oath to any person suspected of disaffection.

A violation of allegiance is treason, the highest offence which a subject can commit. [TREASON.]

The law of England permits a foreigner to be naturalized here, by which naturalization the foreigner owes allegiance to the British crown. If, as is nearly always the case, he still continues to owe allegiance to his former state or sovereign, it may happen that his new allegiance may, under certain circumstances, as for instance in time of war, place him in a difficult situation. This, however, is a matter that concerns himself mainly: the state which receives him as a subject, is willing to do so, if he will accept the terms of naturalization.

Those who wish to become more fully acquainted with this subject and with the distinctions between *liege fealty*, or allegiance, and *simple fealty*, or fealty by reason of tenure, may consult Hale's *Pleas of the Crown*, vol. i. p. 58, *et seq.*, and Mr. Justice Foster's *Discourse on High Treason*.

It is not yet absolutely settled whether a citizen of the United States of North America can divest himself of his allegiance. The law of the United States allows foreigners to be naturalized, but first requires them to abjure their former allegiance, and does not require any evidence that the state or sovereign to whom the foreigner owes allegiance has released him from it. But it cannot be inferred that, because the United States allow foreigners to become American citizens, they also allow their own citizens to divest themselves of their allegiance. The vague expressions used in some of the State Constitutions, that the citizens have a natural and inherent right to emigrate, do not decide the question, even if the words mean that a citizen can renounce his allegiance to his State; for an American citizen owes allegiance to the United States primarily, as it is said. The best opinion is, that in the matter of allegiance the rule of the English common law prevails in the United States, and that an American citizen therefore cannot renounce his allegiance to the United States without their expressed consent, which can be given in no other way than by a law. The cases relating to this subject which have been brought before the federal courts of the United States are discussed in Kent's 'Commentaries,' vol. ii. 4th edition.

ALLIANCE. [TREATY.]

ALLIANCE, HOLY. [HOLY ALLIANCE.]

ALLIANCE, TRIPLE. [TRIPLE ALLIANCE.]

ALLO'DIUM, or ALO'DIUM, property held in absolute dominion, without rendering any service, rent, fealty, or other consideration whatsoever to a superior. [UDAL TENURE.] It is opposed to Feodum or Fief [FIEF; FEUDAL SYSTEM], which means property the use of which is bestowed by the proprietor upon another, on condition that the person to whom the gift is made shall perform certain services to the giver, upon failure of which, or upon the determination of the period to which the gift was confined, the property reverts to the original possessor. Hence arises the mutual relation of lord and vassal.

When the barbarian tribes from the northern parts of Europe overran the Western Roman empire, in the fifth and sixth centuries, they made a partition of the conquered provinces between themselves and the former possessors. The lands which were thus acquired by the Franks, the conquerors of Gaul, were termed allodial. These were subject to no burden except that of military service, the neglect of which was punished with a fine (called Heribannum) proportioned to the wealth of the delinquent. They passed to all the children equally, or, in default of children, to the next of kin of the last proprietor. Of these allodial possessions there was a peculiar species denominated Salic, from which females were excluded. Besides the lands distributed among the nation of the Franks, others termed *fiscal* lands (from Fiscus, a word which, among the Romans, originally signified the property which belonged to the emperor as emperor) were set apart to form a fund which might support the dignity of the king, and supply him with the means of rewarding merit and encouraging valour. These, under the name of *benefices* (beneficia), were granted to favoured subjects, upon the condition, either expressed or implied, of the grantees rendering to the king personal service in the field. It has been supposed by some writers, that these benefices were originally resumable at pleasure, that they were subsequently granted for life, and finally became hereditary. But there is no satisfactory proof of the first stage in this progress. (Hallam, *Middle Ages*, vol. i. chap. 2, 8th ed.)

From the end of the fifth to the end of the eighth century, the allodial tenures prevailed in France. But there were so many advantages attending the beneficiary tenure, that even in the eighth century it appears to have gained ground considerably. The composition for homicide, the test of rank among the barbarous nations of the north of Europe, was, in the case of a king's vassal, treble the amount of what it was in the case of an ordinary free-born Frank. A contumacious resistance on the part of the former to the process of justice in the king's courts, was passed over in silence; while the latter, for the same offence, was punished with confiscation of goods. The latter also was condemned to undergo the ordeal of boiling water for the least crimes; the former, for murder only. A vassal of the king was not obliged to give evidence against his fellow-vassal in the king's courts. Moreover, instead of paying a fine, like the free allodialist, for neglect of military service, he had only to abstain from flesh and wine for as many days as he had failed in attendance upon the army. (Montesquieu, *Esprit des Loix*, lib. xxxi.)

The allodial proprietors, wishing to acquire the important privileges of king's vassals, without losing their domains, invented the practice of surrendering them to the king, in order to receive them back for themselves and their heirs upon the feudal conditions. When the benefices once became hereditary, the custom of what is called subinfeudation followed; that is to say, the possessors granted portions of their estates to be holden of themselves by a similar tenure. This custom began to gain ground even in the eighth century; but the disorders which ensued upon the death of Charlemagne in the ninth century, paved the way to the establishment of the feudal system upon a more extended basis. The vast empire which had been held together by the wisdom and vigour of one man, now crumbled into pieces. The provincial governors usurped the authority and tyrannized over the subjects of his feeble descendants. The Hungarians, a tribe that emerged from Asia at the latter end of the ninth century, spread terror and devastation over Germany, Italy, and part of France. The Scandinavian pirates, more commonly known by the name of Normans, infested the coast with perpetual incursions. Against this complication of evils, the only defence was in the reciprocity of service and protection afforded by the feudal system. The allodial proprietor was willing, upon any terms, to exchange the name of liberty for the security against rapine and anarchy which a state of vassalage offered. In the course of the tenth and eleventh centuries allodial lands in France became for the most part feudal; that is, either they were sur-

rendered by their owners, and received back as simple fiefs, where the owner was compelled to acknowledge himself the *man* or vassal of some lord, on the supposition of an original grant which had never been made, or as *fiefs de protection*, where the submission was expressly grounded upon a compact of mutual defence. Similar changes took place in Italy and Germany, though not to the same extent. But in most of the southern provinces of France, where the Roman law prevailed, the ancient tenure always subsisted, and lands were generally presumed to be allodial unless the contrary was shown. And in Germany, according to Du Cange (*Gloss.* "Barones") a class of men called *Semper Barones* held their lands allodially. With respect to England, it has always been a question whether the feudal system was established there before or after the Norman Conquest. [FEUDAL SYSTEM.] At present allodial possessions are unknown in England, all land being held mediately or immediately of the king. The name for the most absolute dominion over property of this nature is a Fee (Feodum), or an estate in fee, a word which implies a feudal relation. Hence it is, that when a man possessed of an estate in fee dies without heirs, and without having devised his property by will, the estate escheats, or falls back to the lord of whom it was holden: or, where there is no intermediate lord, to the king as lord paramount. The term allodium is also sometimes applied to an estate inherited from an ancestor, as opposed to one which is acquired by any other means. (Spelman, *Gloss.* "Alodium.")

The Latinized forms of this word are various:—Alodis, Alodus, Alodium, Alaudum, and others. The French forms are Aleu, Aleu Franc or Frank Aleu, Franc-alond, Franc-aloy, and Franc-aleuf. In many old charters Alodum is explained by Hereditas, or heritable estate. But it is very difficult to collect any theory from the numerous passages in which the word occurs which shall satisfactorily explain its etymology. (Du Cange, *Gloss.* "Alodis;" Spelman, *Glossarium.*)

The view here taken of the nature of allodial lands, and of the change of this property into feudal tenures, is not free from great difficulties. There is a very elaborate article on allodial land in the *Staats-Lexicon* of Rotteck and Welcker, under the head "Alodium."

ALLOTMENT SYSTEM, the practice of dividing land in small portions for cultivation by agricultural labourers and other cottagers at their leisure, and after they have performed their ordinary day's work. There are some instances of this plan having been resorted to about the close of last century, but it is only since 1830 that its adoption has become common. In 1830 the agricultural districts in the south of England were almost in a state of insurrection. The labourers went about in bands, destroying thrashing-machines, and demanding higher wages; and at night the country was lighted up by incendiary fires. Under the impulse of fear the farmers increased the wages of the labourers, but on the suppression of the disturbances they generally returned to the old rates. The season of alarm did not, however, pass away without some attempts being made to improve the condition of the agricultural labourer, and the extension of the allotment system was the most general mode by which an attempt was made to accomplish this object. A society, called the Labourers' Friend Society, was established in London, to promote the allotment system, and to circulate information respecting it. Allotments (garden-allotments, or field-gardens, as they are sometimes termed) are now common in all the agricultural counties in England; but they are nowhere universal. In East Somerset they are to be found in about fifty parishes; and the quantity of land devoted to allotments is said to be equal to the demand. In several of the northern and midland counties the allotment system is promoted, and in some degree superintended, by a society called the "Northern and Midland Counties Artisans' Labourers' Friend Society." The number of acres under allotment, according to the report of this Society, in June, 1844, was 1082. Allotments are also found in the neighbourhood of several large towns, and the proprietors of factories have in many instances granted allotments to their workmen; but in both

these cases the land is cultivated rather as a recreation than with a view of adding to the means of subsistence. At Nottingham land belonging to the corporation is divided into about four hundred gardens, which let at the rate of 1½*d.* a-yard, or 25*l.* per acre: the greater number of these gardens have been cultivated for about thirty years. Where the tenant is an agricultural labourer, the main object is to increase his resources, and thus enable him to maintain himself without assistance from the poor's rate. There seems to be good authority for stating that the allotment system has been successful in this object; and that it has not only diminished the incentives to crime, but has encouraged habits of sobriety and industry, and led to a general elevation of character. Of 3000 heads of families holding allotments of land in West Kent, not one was committed for any offence during the years 1841 and 1842. In the parish of Hadlow, Kent, there were 35 commitments in 1835, and on the allotment system being introduced in 1836 the commitments were reduced in 1837 to one, and from 1837 to 1843 there had been only one. About 15 of those who were committed in 1835 became holders of allotments, and up to June, 1843, no cause of complaint had arisen against any of them. (Evidence of Mr. Martin: *Report on Allotments of Land.*) Of 443 tenants of allotments under Mrs. Davies Gilbert, in Sussex, there was only one person convicted in the course of thirteen years. (*Communication from Mrs. Davies Gilbert, April,* 1844.) Similar testimony might be collected from various parts of the country where the allotment system prevails. The punctuality with which the rents are paid by the tenants proves how highly the labourers value their patches of land: they scarcely ever fail to bring the money at the appointed time. Among Mrs. Davies Gilbert's numerous tenantry only three have failed to pay their rent in the course of fourteen years; but in each case the size of the allotment (five acres) must be considered as taking it out of what may fairly be considered the allotment system. Captain Scobell, who was one of the earliest, and is now one of the most extensive, promoters of the system, estimates the loss from non-payment of rent as one-fourth, and certainly not more than one-half, per cent.

The principal obstacle to the progress of the allotment system is the difficulty of obtaining land; but the landowners are much more favourable to it than the farmers, whose objections are—that the time which the allotment requires interferes with the labourers' ordinary employment; that it makes them too independent, and less anxious to obtain work; and, thirdly, they object that it affords a cloak for theft. These objections have frequently been entirely given up after the farmers had become practically acquainted with the operation of the system.

The principal rules which experience has shown to be best calculated to render the allotment system successful are briefly as follows:—As it is not intended that the tenant should look upon his plot of ground as a substitute for wages, but merely as a small addition to this main resource, its size should not be greater than can be cultivated during the leisure or spare time of the labourer or his family. The size of the allotment is determined by the number of the tenant's family, or the quality of the land, and in some cases by the quantity of manure which can be collected. The maximum size of allotments, according to Captain Scobell, should not exceed 50 or 60 rods, and 20 rods are sufficient for a person just settled and without a family. The size of Mrs. Davies Gilbert's allotments are as follows:—255 less than a quarter of an acre; 108 quarter-acres; 2 contain sixty rods each; 13 are half-acres; 2 are three-quarter acres; 22 are one-acres; and 16 others contain two, four, and five acres; and one is of nine acres. Some persons state that a man in full employ can manage an allotment of a quarter of an acre, or 40 rods; but others are of opinion that 20 rods are quite enough. In one district the labourer may not be fully employed by the farmer; and in another, under a better system of management, he may be employed at piece-work to the full extent of his powers; and hence the difference of opinion on this point. The

allotment should be situated as near as possible to the tenant's cottage. Captain Scobell says that the distance should never exceed a mile, as the labourer will be fatigued by a longer walk, and it will be inconvenient to send so far for vegetables for daily use. In Kent there are allotments which are two or three miles from the labourer's dwelling, but this is a proof that employment is precarious, and that on the whole his condition is not good. A much higher rent can be obtained for small allotments under garden tillage, than for land in undivided tenancy; and it is but reasonable that the owner of a hundred acres divided into half-acre allotments, and having two-hundred tenants instead of one, should receive additional rent in respect of his additional trouble in collecting the rent, looking after his property, and other expenses that are incident to the division of the land. Those who are conversant with the system say that if the rent is one-third higher, the difference is not unreasonable; but as allotments are at present granted as a matter of favour, they are not set at a rack-rent. It is usual for the landlord to include tithes, parochial and other rates, in the rent, in order to save trouble, and to prevent the tenant being unexpectedly and frequently called upon for money payments. The rent of 137 acres belonging to Mrs. Davies Gilbert, divided into 419 allotments, is 428*l.* 8*s.* 5½*d.*, or nearly three guineas per acre, which includes rates, tithes, and taxes, but is exclusive of houses and buildings, which are paid for separately. The rents vary from 6*s.* up to 8*l.* an acre. A form of agreement, which is usually signed by allotment tenants, embodies rules for the management of the land, and fixes other conditions for their observance. Spade-culture is insisted upon, and the use of the plough is prohibited; also underletting and working on Sunday. There are instances in which attendance at the parish church is enforced; and in other cases it is merely stipulated that there shall be attendance at some place of worship. The allotment is usually forfeited for non-payment of rent, gross misconduct, commitment for any crime, or wilful neglect of the land. A particular rotation of crops is sometimes required in the agreement. The growth of wheat is not allowed in some cases. Where it is permitted, it may probably be safely assumed that in that particular district the labourer is worse off than usual. Some recommend that on a half-acre one half should be in wheat, and the other half in potatoes; and it is assumed that other vegetables are grown in the garden attached to the labourer's cottage. Captain Scobell thinks it unadvisable to exclude any one from holding an allotment on account of previous bad character, as there is a chance of his being reclaimed. Becoming permanently a pauper is a fit ground for exclusion; but when the tenant receives casual relief on account of sickness or accident, he is not excluded. So long as the tenant observes the conditions of his agreement, it is found useful to stipulate that he shall on no other account be ejected from his land.

There seems to be no doubt that the absolute produce of the soil when cultivated in small allotments is greater than the same land would produce under the ordinary course of tillage by farmers. A much larger quantity of manure is used; in some cases, four times as much as farmers are enabled to put upon their land, and a single rod is frequently made to produce vegetables sufficient for the consumption of a labourer's family for six months; but if every labourer had an allotment, the quantity of manure collected could not be so great as it is at present. The disposable produce per acre of land in large farms is obviously much greater than when the same quantity of land is divided into small holdings.

Captain Scobell estimates the average value of an allotment at 2*s.* per week, or about 5*l.* per year, and that during the year twenty days' labour is required. The profit is equal to ten weeks' labour at wages of 10*s.* per week. According to another estimate, the gross profit of half an acre is calculated at 19*l.* The produce consists of twelve bushels of wheat at 7*s.*, and six hundredweight of bacon at 6*d.* per lb.; and something is set down as the value of the straw. The rent, seed, and other expenses, it is said, will

amount to 3*l.* 10*s.*, leaving a profit (without deducting the value of the labour) of 15*l.* 10*s.*, which is equal to 6*s.* a week for a whole year. Such an allotment as the one here alluded to will require about thirty days' labour in the course of a year; but it is necessary that the chief part of this labour should be given between Lady-day and Michaelmas. Supposing that there are a million families in England and Wales who are in the same circumstances as the tenants of existing allotments, and that four families had an acre amongst them, the whole quantity of land in allotments would be 250,000 acres, or nearly 400 square miles, which is one-third more than the area of Middlesex, and about the 128th part of the area of England. This would be about one forty-third of the arable land in England. At three guineas an acre the rent would amount to 787,500*l.*, and the value of the produce, according to Captain Scobell, would be about 5,000,000*l.*

From the Anglo-Saxon period to the reign of Henry VII., nearly the entire population of England derived their subsistence immediately from the land. The great landowner consumed the produce of his demesne, which was cultivated partly by prædial slaves and by the labour of the tenants and cottiers attached to the manor. These tenants were the occupiers of small farms, and paid their rent in kind or in services, or in both. The cottagers had each a small croft or parcel of land attached to his dwelling, and the right of turning out a cow or pigs, or a few sheep, into the woods, commons, and wastes of the manor. While working upon the lord's demesne, they generally received their food. [VILLEIN and VILLENAGE.] The occupation of the land on a farm of one hundred and sixty acres, called Holt, in the parish of Clapham, Sussex, has been traced at various dates between the years 1200 and 1400. During the thirteenth and fourteenth centuries, this farm, which is now occupied by one tenant, was a hamlet, and there is a document in existence which contains twenty-one distinct conveyances of land in fee, described to be parcels of this hamlet. In 1400 the number of proprietors began to decrease; by the year 1520 it had been reduced to six; in the reign of James I. the six were reduced to two; and soon after the restoration of Charles II., the whole became the property of one owner, who let it as a farm to one occupier. (*Quarterly Review*, No. 81, p. 250.) The history of the parish of Hawsted in Suffolk, by Sir T. Cullum, shows a similar state of things with regard to the occupancy of land. In the reign of Edward I. (1272-1307) two-thirds of the land in the parish, which contains 1980 acres, were held by seven persons, and the remaining third, or 660 acres, was held by twenty-six persons, which would give rather more than twenty-five acres to each holder. The number of tenants who did suit and service in the manorial court at a somewhat later period was thirty-two; and one tenant was an occupier of only three acres. In the reign of Edward I. there were fifty messuages in the parish; in 1784 there were fifty-two; in 1831 there were 62, inhabited by eighty-eight families; and in 1841 there were one hundred inhabited houses, the increase of population being from 414 in 1831 to 476 in 1841. In 1831 there were nine occupiers of land who employed labourers, and two who did not hire labour.

The consolidation of small farms in the sixteenth century, and the altered social state of the country which took place at that period from a variety of causes, dissevered to a great extent the labouring classes from the soil which they cultivated. They now worked for money wages; and in vain did the legislature attempt to preserve this class from dependence on this source of subsistence, by enacting penalties against building any cottage "without laying four acres of land thereto." (31 Eliz. c. 7.) There were still, however, large tracts of waste and common lands on which the cottager could turn a cow, a pig, a few sheep, or geese, and this right still gave him a portion of subsistence directly from the land. The division and inclosure of these commons and wastes completed the process by which the labourer was thrown for his sole dependence on money wages. From the reign of George I. to the

close of the reign of George III., about four thousand inclosure bills were passed. Under these allotments were made, not to the occupier, but the owner of a cottage, and this compensation for the extinguished common right generally benefited only the large landholder; and when this was not the case, the cottager was tempted by a high price offered by his richer neighbours, or driven by the abuses of the old poor-law, to part with his patch of land.

So long as the labourer can obtain fair wages, he can obtain the chief necessaries of life, yet it happens that in most parts of the country he would be unable to procure any other description of vegetables, except potatoes, unless he had a garden attached to his cottage. The cottager's garden should be large enough to enable him to grow sufficient vegetables of all kinds for his own consumption; though if potatoes for winter storing can be purchased from his employer, or grown under the usual conditions on a patch of his employer's land, it will be as profitable as growing them himself, that is, if he is in full employment and obtains piece-work at good wages. The necessity for cultivating the land on his own account, further than for the purpose of raising sufficient vegetables for his own consumption, and of resorting to what is understood by the allotment system, is, in proportion to its urgency, an indication of the low position of the agricultural labourer, and proves either that he has not constant employment or that his wages are very low. If he has sunk to this inferior state, and there are no other means of increasing his resources, the allotment system is then an expedient deserving of attention; but it should be understood that, in an economical sense, it is a more satisfactory state of things when the improvement in the condition of the labourer arises from the prosperity of the farmer and his ability to give higher wages. The profits of the farmer and the wages of the labourer are derived from the same source, and if the latter are reduced to a very low point, wages must be low also. When improvement in the condition of the labourer springs from the allotment system, and not from the wages which he receives, it may generally be assumed either that the resources of the farmer are impaired, or that the labourers are so numerous that they cannot all obtain as much work as they are capable of performing.

The question of the advantages of the allotment system may be reduced within narrow limits. If it be understood in the sense of the definition given of it at the head of this article, the object is rather moral than economical But the allotment system may also be intended, not to change the labourer into an independent cultivator, but to supply him with a means of making a living in those places where his ordinary wages are not sufficient. But, as already observed, this implies and admits that his condition is not so good as it ought to be for his own and the general benefit. There is a superabundance of agricultural labour, or a want of sufficient capital invested in agriculture, in the place of the labourers' residence, or both causes combine to depress his condition. Now it is possible that the allotment system, if carried to any great extent, might contribute to increase the superabundance of labour, by inviting to a district more labourers than are wanted, or by giving them an inducement to marry too soon, and so ultimately to depress the condition of the labourer still further. It is no answer to this, that plots of ground have been and are cultivated by the labourer advantageously to himself and profitably to the owner. It may be admitted that circumstances in any given place may be such, that the distribution of allotments among labourers who are not fully employed, may be a great temporary advantage to themselves and to the neighbourhood. But a continual extension of such allotments in the same neighbourhood, though it might be called for by the wants of the labourers, would be no benefit to that neighbourhood, nor ultimately to the labourers themselves; for the end would be, that many of them would be reduced to get their entire means of subsistence out of a small plot of ground. The allotment system then, if carried to this extent, involves the question of the advantage of very small farms

as compared with large ones; a question that cannot be discussed satisfactorily without a consideration of the general economic condition of each particular country. But it may be laid down as a sure principle that in a country where a large part of the population are employed in other pursuits than those of agriculture, the necessary supply of food and other agricultural produce, for those who are not agriculturists, cannot be raised so profitably in any way as by the well instructed farmer, who has a sufficient capital to cultivate a large farm; and if the whole country were divided into small farms, the necessary supply of produce for the wants of the non-agriculturists would ultimately fail altogether. For if the small-farm system were gradually extended in proportion to the demand, the result would be that each man must, in the course of the distribution, have just as much as would raise produce enough for himself and his family; and ultimately, he must be content with less than is sufficient, and he would be reduced to the condition of the Irishman who lives on his small plot of land.

There is a difference between small farms of a few acres which are let on lease, and small farms which are a man's property. If all farms were divided into small holdings, there could be little accumulation and little improvement. There is the same disadvantage in small farms compared with great, that there is in small manufacturing establishments compared with large ones. Profitable production is carried on better on a large farm when proper capital is employed (and indeed a large farm without proper capital would ruin any man), than if it were divided into a number of small farms and the same amount of capital were employed; for it is obvious that the amount of fixed capital in buildings, agricultural instruments, and animals must be greater on the small farms than on the large one. There are many other considerations also which show that, as a matter of public economy, the large farms are best for the public, and consequently for the holders of such farms. The small farms, if stocked sufficiently, would pay the farmer, not equally well with large farms, but still they might pay him sufficiently well to make his investment profitable. But such farms are generally understocked. In fact it is only in those cases where the cultivation is with the spade, and the land is managed like a garden, that such small holdings can be made profitable: the holder cannot, as a general rule, enter into competition with the large producer as a supplier of the market.

In some countries, where there are numerous small landholders, and it is usual for the estate to be divided on the death of the head of the family, the tendency must be, and is, to carry this division further than is profitable either to the community or to individuals. But in such case the evil may correct itself: a man can sell what it is not profitable to keep, and turn his hand to something else. The man who has been long attached to a small plot as a tenant, and mainly or entirely depends on it for his subsistence, will not leave it till he is turned out.

The allotment system, when limited to the giving a labourer a small plot of garden ground, presents many advantages. But the object of making such allotments is moral rather than economic: the cultivation of a few vegetables and flowers is a pleasing occupation, and has a tendency to keep a man at home and from the alehouse. In many cases also, a small plot of ground can be cultivated by the labour of the wife and the young children, and a pig may be kept on the produce of the garden. The agricultural labour of young children is of very little value, but children may often be employed on a small plot of ground. Such employment is better than allowing the children to do nothing at all and to run about the lanes; and if their labour is well directed to a small garden, it cannot fail to be productive, and to add greatly to the supply of vegetables for the family.

Any extension of the allotment system beyond what a labourer can cultivate easily at his leisure hours, or with the assistance of his family, may be for a time a specious benefit, but in the end will be an injury to himself and to others. If a man is a labourer for hire, that is

his vocation, and he cannot be anything else. If he becomes half labourer and half cultivator, he runs a risk of failing in both capacities; and if he becomes a cultivator on a small scale, and with insufficient capital, he must enter into competition in the market with those who can produce cheaper than himself; or he must confine himself to a bare subsistence from his ground, with little or nothing to give in exchange for those things which he wants and cannot produce himself.

ALLOY. [COINAGE.]

ALMANAC. The derivation of this word has given some trouble to grammarians. The most rational derivation appears to be from the two Arabic words *al*, the article, and *mana* or *manah*, to count.

An almanac, in the modern sense of the word, is an annual publication, giving the civil divisions of the year, the moveable and other feasts, and the times of the various astronomical phenomena, including not only those which are remarkable, such as the eclipses of the moon or sun, but also those of a more ordinary and useful character, such as the places of the sun, moon, and planets, the position of the principal fixed stars, the times of high and low water, and such information relative to the weather as observation has hitherto furnished. The agricultural, political, and statistical information which is usually contained in popular almanacs, though as valuable a part of the work as any, is comparatively of modern date.

It is impossible that any country in which astronomy was at all cultivated could be long without an almanac of some species. Accordingly we find the first astronomers of every age and country employed, either in their construction or improvement. The belief in astrology, which has prevailed throughout the East from time immemorial, rendered almanacs absolutely necessary, as the very foundation of the pretended science consisted in an accurate knowledge of the state of the heavens. With the almanacs, if indeed they had them not before, the above-mentioned absurdities were introduced into the West, and it is only within these few years that astrological predictions have not been contained in nine almanacs out of ten. It is not known what were the first almanacs published in Europe. That the Alexandrine Greeks constructed them in or after the time of Ptolemy, appears from an account of Theon, the celebrated commentator upon the Almagest, in a manuscript found by M. Delambre at Paris, in which the method of arranging them is explained, and the proper materials pointed out. It is impossible to suppose that at any period almanacs were uncommon: but in the dearth of books whose names have come down to us, the earliest of which Lalande, an indefatigable bibliographer, could obtain any notice, are those of Solomon Jarchus, published in and about 1150, and of the celebrated Purbach, published 1450—1461. The almanacs of Regiomontanus, said by Bailly, in his 'History of Astronomy,' to have been the first ever *published*, but which it might be more correct to say ever *printed*, appeared between 1475 and 1506, since which time we can trace a continued chain of such productions. (*Bibliographie Astronomique* of Lalande, and Hutton's *Mathematical Dictionary*, article 'Ephemeris.') The almanacs of Regiomontanus, which simply contained the eclipses and the places of the planets, were sold, it is said, for ten crowns of gold. An almanac for 1442, in manuscript, we presume, is preserved in the Bibliothèque du Roi at Paris. The almanacs of Engel of Vienna were published from 1494 to 1500, and those of Bernard de Granolachs of Barcelona, from about 1487. There are various manuscript almanacs of the fourteenth century in the libraries of the British Museum, and of Corpus Christi College, Cambridge.

The first astronomical almanacs published in France were those of Duret de Montbrison, in 1637, which series continued till 1700. But there must have been previous publications of some similar description; for, in 1579, an ordonnance of Henry III. forbade all makers of almanacs to prophesy, directly or indirectly, concerning the affairs either of the state or of individuals. In England James I. granted a monopoly of the trade

in almanacs to the Universities and to the Stationers' Company, and under their patronage astrology flourished till beyond the middle of the last century, but not altogether unopposed; the humorous attack of Swift, under the name of Bickerstaff, upon Partridge's almanac, is well known, both from the amusement which the public derived from the controversy and the perpetuation of the assumed surname in the 'Tatler.' But though Swift stopped the mouth of Partridge, he could not destroy the corporation under whose direction the almanac was published. The Stationers' Company (for the Universities were only passive, having accepted an annuity from their colleagues, and resigned any active exercise of their privilege) found another Partridge, as good a prophet as his predecessor; nor have we been without one to this day.

The Stationers' Company appears to have acted from a simple desire to give people that which would sell, whether astrological or not; and not from any peculiar turn for prophecy inherent in the corporation. Thus even in 1624 they issued at the same time the usual predictions in one almanac, and undisguised contempt of them in another, apparently to suit all tastes. The almanac of Allstree, published in the above-mentioned year, calls the supposed influence of the moon upon different members of the body "heathenish," and dissuades from astrology in the following lines, which make up in sense for their want of elegance and rhythm:—

> "Let every philomathy (*i. e.* mathematician)
> Leave lying Astrology,
> And write true Astronomy,
> And I'le beare you company."

In 1775 a blow was struck which demolished the legal monopoly. One Thomas Carnan, a bookseller, whose name deserves honourable remembrance, had some years before detected or presumed the illegality of the exclusive right, and invaded it accordingly. The cause came before the Court of Common Pleas in the year above mentioned, and was there decided against the Company. Lord North, in 1779, brought a bill into the House of Commons to renew and legalize the privilege, but, after an able argument by Erskine in favour of the public, the House rejected the ministerial project by a majority of 45. The absurdity and even indecency of some of these productions were fully exposed by Erskine; but the defeated monopolists managed to regain the exclusive market by purchasing the works of their competitors. The astrological and other predictions still continued; but it is some extenuation that the public, long used to predictions of the deaths of princes and falls of rain, refused to receive any almanacs which did not contain their favourite absurdities. It is said (Baily, *Further remarks on the defective state of the Nautical Almanac*, &c., p. 9) that the Stationers' Company once tried the experiment of partially reconciling Francis Moore and common sense, by no greater step than omitting the column of the moon's influence on the parts of the human body, and that most of the copies were returned upon their hands. For more detail upon the contents of former almanacs, see the *Companion to the Almanac* for 1829, and also the *London Magazine* of December, 1828, and *Journal of Education*, No. V.

The 'British Almanac' was published by the Society for the Diffusion of Useful Knowledge in 1828. Its success induced the Stationers' Company to believe that the public would no longer refuse a good almanac because it only predicted purely astronomical phenomena, and they accordingly published the 'Englishman's Almanac,' which is unexceptionable. Other almanacs have diminished the quantity and tone of their objectionable parts.

Of the professedly astronomical almanacs the most important in England is the 'Nautical Almanac,' published by the Admiralty for the use both of astronomers and seamen. This work was projected by Dr. Maskelyne, then Astronomer Royal, and first appeared in 1767. The employment of lunar distances in finding the longitude, of the efficacy of which method Maskelyne had satisfied himself in a voyage to St. Helena, required new tables, which should give the distances of the moon from the sun and principal fixed stars, for intervals of a

few hours at most. By the zeal of Dr. Maskelyne, aided by the government, the project was carried into effect, and it continued under his superintendence for forty-eight years. During this time it received the highest encomiums from all foreign authorities, for which see the French *Encyclopædie*, art. 'Almanach,' and the Histories of Montucla and Delambre. From 1774 to 1789 the French 'Connoissance des Tems' borrowed its lunar distances from the English almanac. On the death of Maskelyne it did not continue to improve, and, without absolutely falling off, was inadequate to the wants either of seamen or astronomers. From the year 1820, various complaints were made of it in print. It was latterly stated that officers employed in surveys were obliged to have recourse to foreign almanacs for what could not be obtained in their own; that Berlin, Coimbra, and even Milan were better provided with the helps of navigation; and, finally, that the calculations were not made from the best and most improved tables. In consequence of these complaints, which were almost universally allowed by astronomers to contain a great deal of truth, the government, in 1830, requested the opinion of the Astronomical Society upon the subject, and the Report of the Committee appointed by that body, which may be found in the fourth volume of their *Transactions*, is a sufficient proof of the opinion of practical astronomers on the previous state of the work. The alterations proposed by the Society were entirely adopted by the government, and the first almanac containing them was that for 1834. The contents of the old 'Nautical Almanac' may be found in the *Companion to the Almanac* for 1829. We subjoin a list of the principal alterations and additions which appear in the new work:—

1. The substitution of *mean* for *apparent* time throughout, the sun's right ascension and declination being given for both mean and apparent noon.

2. The addition of the mean time of transit of the first point of Aries, or the beginning of the sidereal day.

3. The moon's right ascension and declination given for every hour, instead of every twelve hours. We must mention however that the intervals of twelve hours were diminished to three hours in the 'Nautical Almanac' for 1833, by Mr. Pond, the Astronomer Royal.

4. The distances of the moon from the planets for every three hours.

5. The time of contact of Jupiter's satellites and their shadows with the planet.

6. Logarithms of the quantities which vary from day to day, used in the reduction of the fixed stars.

7. Lists of stars which come on the meridian nearly with the moon; of occultations of the planets and stars by the moon, visible at Greenwich.

8. The places of the old planets for *every* day at noon, instead of every tenth day; and those of the four small planets for every fourth day, which were previously not mentioned at all.

9. The 60 stars, whose places were given for every ten days, are increased to 100.

10. The number of lunar distances given is very much increased.

Besides these principal alterations, there is a large number of minor additions, tending for the most part to save labour in calculation; and the extent to which the results have been carried is materially enlarged. Any *errata* discovered in any mathematical tables which are generally or even occasionally of use, will be published in the 'Nautical Almanac,' if communicated by the finder.

This country was forestalled in most of the important changes just mentioned, by the Berlin 'Ephemeris,' published under the superintendence of Professor Encke. Its predecessor, the 'Astronomisches Jahrbuch,' was conducted for fifty years by the celebrated Bode; and was entirely remodelled by Encke in 1830. Of other works of the same kind, published on the Continent, those of Coimbra and Milan are among the most valuable; the latter was commenced in 1755, by M. de Cæsaris; we have not been able to learn the date of the first establishment of the former.

The oldest national astronomical almanac is the French 'Connoissance des Tems,' published at present under the superintendence of the Bureau des Longitudes at Paris. It was commenced in

1679 by Picard, and continued by him till 1684. It then passed through the hands of various astronomers, till 1760, when the conduct of it was given to Lalande, who, besides other alterations, first introduced the lunar distances, which have been already alluded to. At present the plan is very similar to that of the new 'Nautical Almanac,' with the addition of very valuable original memoirs which appear yearly. In fact we may say generally, that the original contributions to the various continental almanacs are among their most valuable parts; and, as Professor Airy remarks, 'Reports of the British Association,' &c., p. 128, "In fact nearly all the astronomy of the present century is to be found in these works," that is, in certain periodicals which are mentioned, "or in the 'Ephemerides' of Berlin, Paris, or Milan."

Next to the 'Nautical Almanac,' the private publication which is most entitled to notice as an astronomical almanac is White's 'Ephemeris,' a work which is nearly as old as the monopoly previously described. For many years past, this publication has given astronomical data sufficient to enable the seaman to find his latitude and time. The 'Gentleman's Diary,' commenced in 1741, and the 'Ladies' Diary,' in 1705, have powerfully aided in keeping up a mathematical taste, to a certain extent, throughout the country, by annually proposing problems for competition: several, who have afterwards become celebrated in mathematics, have commenced their career by the solution of these problems.

The duty on almanacs was abolished in August, 1834, by 3 & 4 William IV. c. 57. The stamp was fifteen pence on each almanac. The average number of stamps issued between 1821 and 1830 inclusive, was about 499,000 yearly, producing an average revenue of about 31,000*l.* The largest number of almanacs stamped in any one year during the above period was 528,254 in 1821, and the smallest number was 444,474 in 1830; and in 1833, the year before the duty was abolished, the amount of duty was only 26,164*l.* The tax prevented the free competition of respectable publishers in almanacs, and tempted so many persons to evade the law, that unstamped almanacs were circulated in as large numbers as those which paid the tax. It is stated in the Report of the Commissioners of Excise Inquiry that 200 new almanacs were published as soon as the duty was repealed, of some of which upwards of 250,000 copies were sold, although the old ones not only maintained, but, in some cases, doubled their circulation. The most marked effect of the repeal of the duty is perhaps the improvement in the character of almanacs.

ALMONER, once written Aumner and Amner, was an officer in a king's, prince's, prelate's, or other great man's household, whose business it was to distribute alms to the poor. Previous to the dissolution every great monastery in England had its almoner. The almoner of the king of France was styled his *grand aumonier*, and we find a similar officer at a very early period attached to the household of the popes. The word almoner is a corruption of eleemosynarius, a word which is formed from the Greek *eleemósyne* (ἐλεημοσύνη). The word almonarius is a corruption of eleemosynarius.

'Fleta,' a law treatise of the time of Edward I., describes the duties of the high almoner as they then stood in England (ii. c. 23). He had to collect the fragments of the royal table, and distribute them daily to the poor; to visit the sick, poor widows, prisoners, and other persons in distress; he reminded the king about the bestowal of his alms, especially on saints'-days, and was careful that the cast-off robes, which were often of high price, should not be bestowed on players, minstrels, or flatterers, but their value given to increase the king's charity.

In modern times the office of lord high almoner has been long held by the archbishops of York. There is also a sub-almoner, an office which is at present filled by the dean of Chester. The hereditary grand almoner is the Marquis of Exeter. There is an office appropriated to the business of the almonry in Middle Scotland Yard, Whitehall. Chamberlayne, in the 'Present State of Great Britain,' octavo, London, 1755, gives an account of the lord almoner's office as it

then stood. "The lord almoner disposes of the king's alms, and for that use receives (besides other monies allowed by the king) all deodands and *bona felonum de se* to be that way disposed. Moreover, the lord almoner hath the privilege to give the king's dish to whatsoever poor men he pleases; that is, the first dish at dinner which is set upon the king's table, or instead thereof 4*d. per diem.* Next he distributes to twenty-four poor men, nominated by the parishioners of the parish adjacent to the king's palace of residence, to each of them 4*d.* in money, a twopenny loaf, and a gallon of beer, or, instead thereof, 3*d.* in money, to be equally divided among them every morning at seven of the clock at the court-gate; and every poor man, before he receives the alms, to repeat the Creed and the Lord's Prayer in the presence of one of the king's chaplains, deputed by the lord almoner to be his sub-almoner; who is also to scatter new-coined twopences in the towns and places where the king passeth through in his progress, to a certain sum by the year. Besides there are many poor pensioners to the king and queen below stairs, that is, such as are put to pension, either because they are so old that they are unfit for service, or else the widows of such of his majesty's household servants that died poor, and were not able to provide for their wives and children in their lifetimes: every one of these hath a competency duly paid them. Under the lord high almoner there are a sub-almoner, a yeoman, and two grooms of the almonry."

The lord almoner's annual distribution is now made in the queen's name, on the Thursday before Easter, called Maundy Thursday.

There is at Cambridge the lord almoner's professorship of Arabic, founded in 1770. The professor is appointed by the lord almoner, and is paid out of the almonry funds.

The grand almoner of the king of France was once the highest ecclesiastical dignitary in that kingdom. To him belonged the distribution of the royal bounty to the poor, the superintendence of all houses in the kingdom for the reception of poor foreigners, and houses of lepers; the king received the sacrament from his hand; and he said mass before the king in all great ceremonies and solemnities. At the establishment of the imperial household in 1804, Napoleon restored the office of grand almoner of France in the person of Cardinal Fesch: and the office was continued till the exile of Charles X.

Ducange, in his *Glossary* ('Eleemosynarii'), gives other meanings of the word almoner. It was sometimes used for those who distributed the pious bequests of others; sometimes for a person who by testament left alms to the poor; and sometimes for the poor upon whom the alms were bestowed. The *eleemosynarii regis*, or persons who were supported by the king's bounty, occasionally noticed in the Domesday Survey, were of this last description. Almoner is a name also given in ecclesiastical writers to the deacons of churches.

ALMS-HOUSE, an edifice, or collection of tenements, built by a private person, and endowed with a revenue for the maintenance of a certain number of poor, aged, or disabled people. England is the only country which possesses alms-houses in abundance, though many such exist in Italy. In England, they appear to have succeeded the incorporated hospitals for the relief of poor and impotent people, which were dissolved by King Henry VIII. The rules for the government of alms-houses are those which the founder has made or empowered others to make. Alms-houses belong to that class of endowments which are comprehended under the name of Charities.

AMBASSADOR (directly from the French *Ambassadeur*), is the term commonly used to designate every kind of diplomatic minister or agent. The word ambassador is sometimes written with an E, a form which the English always use in the word Embassy. Spelman derives Ambassador from Ambactus, a word used by Cæsar (*Gallic War*, vi. 15, 'Ambactos clientesque'). The various forms in which the word Ambassador has been written are collected in Webster's *English Dictionary*, art. 'Embassador.' An ambassador may be defined to be a person sent by one sovereign power to another to

treat upon affairs of state. The necessity of employing such means of communication between independent communities is obvious, and there is hardly an instance of a people in so rude a state of society as to be ignorant of the functions of an ambassador, and of the respect which is due to his office. In modern states however, whatever may be the form of government, ambassadors are generally named by the person who has the supreme executive power. In the United States of North America, the President names an ambassador, but the appointment must be confirmed by the Senate. Sometimes the power of appointing and sending ambassadors has been delegated to a subordinate executive officer, as it was to the viceroy of Naples, the Governor of Milan, and the Spanish Governor-General of the Netherlands. It is exercised by every power which can make war and peace, and accordingly is possessed by the East India Company. Embassies were anciently sent only on particular occasions, with authority to transact some specific business; as, for instance, to negotiate a treaty of peace or alliance, or to complain of wrongs and demand redress. But great changes were gradually introduced in the political condition of Europe. The several states which had risen to importance, although independent of one another, were bound together by numerous ties, and with the extension of commerce, the intercourse between them became so great, and their interests so complicated, that it was found expedient for them to keep up a more regular communication; and with this view it became customary for one power to have its ambassador residing constantly at the court or capital city of another.

Among the ordinary functions of an ambassador, the following are the most important:—1st, to conduct negotiations on behalf of his country; the extent of his authority in this respect is marked and limited by the power which he has received from home; he has, however, according to modern usage, no authority to conclude any engagement definitively, the treaty which he has negotiated having no binding power, till it has been formally ratified by his government; 2ndly, to watch over the accomplishment of all existing engagements; and 3rdly, to take care generally that nothing is done within the territories of the state, nor any treaty entered into with other powers, by which the honour or interests of his country can be affected, without informing his government of such measures.

An ambassador has also certain duties to perform towards private individuals of his own nation: such as to provide them with passports, where they are required; to present them at court, if they produce the requisite testimonials; to protect them from violence and injustice; and if any manifest wrong has been done, or if justice has been refused them, to exert himself to obtain redress, and to secure for them the full benefit of the laws; and, lastly, to assist them in maintaining their rights in courts of justice, as well by certifying what is the law of his country upon the point in dispute, as by the authentication of private documents, which is usually confined in practice to such as have been previously authenticated at the foreign office of his own government, and thence transmitted to him.

It is now the established usage of European countries and of those parts of North America which were colonized by Europeans and have become independent states, to send ambassadors to one another. The sending of an ambassador by any state implies that such state is also willing to receive an ambassador. It is only, however, in time of peace that this interchange of ambassadors regularly takes place. In time of war, a hostile power cannot claim to have its ambassadors received, unless they are provided with safe-conduct or passport; and the granting of these is merely a matter of discretion. It is, in all cases, requisite that the ambassador should be provided with the proofs of his authority; these are contained in an instrument, called his Letter of Credence, or Credentials, delivered to him by his own government, and addressed to that of the state to which he is sent. A refusal to receive an ambassador properly accredited, if made without sufficient cause, is considered a gross insult to the power that he represents. But

if one of several competitors for the sovereign power in any country, or if a province which has revolted and asserts its independence, sends an ambassador to a sovereign state, such state, if it receives the ambassador, thereby recognises the competitor in the one case to be actually the sovereign, and the revolted province, in the other, to be actually independent. Though this may be the general principle, the practice is somewhat different. In such cases, consuls are generally first sent; and when a government has been established for some time *de facto*, as it is termed, that is, in fact, it is usual with states who have sent consuls to send ministers also in due time, even though the mother country, to which the revolted states belong, may not have recognised their independence. This was done by the British government and others in the case of the South American states, whose independence Spain has not yet recognised.

It is said that a government may refuse to receive an ambassador, if he is personally disagreeable to the state, or of a notoriously bad character. But it is now generally the practice, in order to avoid such a refusal, to inform the court beforehand of the person intended to be sent. Every government, it is also said, may make general rules respecting the class of persons whom it chooses to admit as ambassadors; but every state would think itself aggrieved and insulted by the refusal of the ambassador whom it has appointed, except on satisfactory grounds. There is nothing, for instance, in the general law of nations to prevent a man's being accredited by a foreign power to the government of his own country; and in this case he is clothed, as far as his character as an ambassador is concerned, with precisely the same rights as if he was a member of the state by which he is employed. Prince Pozzo di Borgo, a Corsican, was many years Russian ambassador at Paris. But any government may, by a general regulation, refuse to admit, as France and Sweden have in fact done, any of its own subjects as the representative of an independent state.

It is the duty of a state, with respect to ambassadors sent to it, to protect them from everything which may in any degree interfere with the due performance of their functions. This duty commences before the ambassador has delivered his credentials, and as soon as his appointment has been notified to the court.

The first privilege of an ambassador in the country to which he is sent, is perfect security. This is necessary in order that he may discharge his functions; and the violation of this privilege has always been considered an offence against the law of nations, whether the violation proceeds from the sovereign power itself, or from the unauthorized acts of individuals.

The Porte used to violate this privilege, by confining the ministers of any power it went to war with, in the Seven Towers, under the pretence of protecting them from popular outrage. The last minister shut up in the 'Seven Towers' was M. Ruffin, the envoy of the French republic. Since that time the practice has dropped.

The second important privilege of an ambassador is, that no legal process can affect him, in his person or his property; so much of his property, at least, as is connected with his official character, such as his furniture, equipages, &c. (Bynkerschoek, *De foro Legatorum.*) This privilege is in some degree subsidiary to the former; for it would be of little avail to protect an ambassador from open outrage, if he were liable to be harassed by legal proceedings, which, whether instituted (as it is always possible they might be) without foundation, or well founded, would interfere with the discharge of his public functions. Ambassadors are, therefore, deemed not to be amenable for their conduct before any criminal tribunal of the country they reside in.

But ambassadors cannot misconduct themselves with impunity. They are bound to respect the law and customs of the country they are in; and if they commit any offence, the sovereign may complain of it to the government which they represent; or, if the case is of a more serious nature, he may demand that they be recalled, or may even dismiss them peremptorily, and in either case require that they be brought to trial in their own country. And if an ambassador is guilty of an offence which threatens the

immediate safety of the state, not even the privilege of personal security will protect him from any degree of force which may be necessary to defeat his intentions: thus, if he engages in a conspiracy against the government, he may, if the circumstances require it, be put under arrest, in order to be sent home, and if he is found in arms joining in a rebellion, he may be treated as an enemy.

The same principle also extends to civil suits, and no claim can be enforced against an ambassador by any compulsory process.

These privileges are not confined to the ambassador alone, but are extended to all his suite—his companions, as they are sometimes called,—including not only the persons employed by him in diplomatic services, but his wife, chaplain, and household. The law of nations in this respect is fully recognised by the law of England. By the statute of 7 Anne, c. 12, all legal process against the person or goods of an ambassador, or of his domestic, or domestic servants, is declared to be void. The benefit of this Act may be claimed by any one who is actually in the domestic service of the ambassador, whether he is a British subject or a foreigner, provided he is not a merchant or trader within the bankrupt law; and it is not necessary that he should be resident in the ambassador's house. But if he takes a house, and uses it for any other purpose besides that of residence—as if he lets part of it in lodgings, he so far loses his privilege, and his goods are liable to be distrained for parochial rates.

Whoever sues out or executes any process contrary to the provisions of the act, is punishable at the discretion of the lord chancellor and the two chief justices, or any two of them, as a violator of the law of nations, and disturber of the public repose;—with this exception, however, that no one can be punished for arresting an ambassador's servant, unless the name of such servant be registered with the secretary of state, and by him transmitted to the sheriffs of London and Middlesex.

The third important privilege of an ambassador is, that his residence enjoys a security similar to that of his person and property: it is not only protected from open outrage, but it is likewise exempted from being searched or visited, whether by the police, by revenue officers, or under colour of legal process of any description whatever.

This privilege has sometimes been construed to extend so far, as to make the ambassador's residence an asylum to which any offender might flee and be out of the reach of the law; but the government may, in such a case, demand that the offender be given up, and if he is an offender against the state, in case of a refusal on the part of the ambassador, and if the circumstances require it, he may be taken by force.

This privilege of asylum, as it is called, was formerly granted in some cities to the whole quarter in which the ambassador resided; such was the case at Madrid, till in the year 1684 it was confined to the residence itself. Such also was the case at Rome to a much later date; and even at the present day some vestiges of this immunity still remain, but since 1815 it has been confined to cases of correctional police.

There are some other privileges which, though not essential to the character of ambassadors, are yet very generally admitted. Ambassadors are, for instance, in all civilized countries allowed the free exercise of their religion; they are in general exempted from direct taxation; and they are usually allowed to import their goods without paying any custom-house duties: this last privilege, however, being extremely liable to abuse, has sometimes been limited. At Madrid since the year 1814, and at St. Petersburg since 1817, ambassadors are allowed six months to import their goods free of customs, and after that time their exemption ceases. At Berlin they are only allowed to import goods until the duties payable amount to a certain sum.

If any violence has been offered to an ambassador, or any of his privileges have been infringed, although he may himself, if he chooses, prosecute the offender, it is more usual for him to demand satisfaction of the government, and it is their duty to bring the offender to punishment.

The title of ambassador, in the more limited sense of the word, as it is used at present, is confined to diplomatic ministers of the highest order. Ambassadors, in this sense of the word, hold an office of very exalted rank; their credentials are addressed immediately from their own sovereign to the sovereign to whom they are sent; with whom they thereby are entitled to treat personally, without the intervention of his ministers, in the same manner as their master would if he were present. This is a power, however, which, at least in free states, where the ministers alone are responsible for the acts of the government, exists rather in name than in reality. The ambassadors, properly so called, are deemed to represent not only the interests, but likewise the person and dignity of their master or of their state; but this representative character, as it is called, amounts in reality to little more than the enjoyment of certain marks of distinction; the principal of which are, that an ambassador is always styled 'Your Excellence,' which was formerly the mode of addressing a sovereign prince; 2. That he takes precedence next after princes of the blood royal, &c.

Ambassadors are of two kinds:—1. Those who reside regularly at the court at which they are accredited, to perform the usual duties of their office; 2. Those who are sent on special occasions, either on missions of important business, as the negotiation of a treaty, or more frequently on some errand of state ceremony, such as to be present at a coronation or a marriage. The designation of Ambassador Extraordinary was originally appropriated to those of the second kind (such as belonged to the first being styled Ordinary Ambassadors); but the title of Extraordinary, being considered more exalted, is now usually bestowed even on those who are regularly resident. To the highest order of minister belong also the Legates and Nuncios of the Pope. [LEGATE; NUNCIO.]

The rank and pomp annexed to the office of ambassador being attended with considerable expense, and having frequently occasioned embarrassments and disputes, it was found expedient to employ ministers under other denominations, who, though inferior in point of dignity, should be invested with equal powers. The chief difference by which all the lower orders of diplomatic agents are distinguished from ambassadors, properly so called, is, that they are the representatives not of the personal dignity of their prince, but only of his affairs and interests, in the same manner as an ordinary agent is the representative of his principal. Diplomatic ministers of the second order receive their credentials (like ambassadors) immediately from their own sovereign. To this order belong envoys, ordinary and extraordinary, ministers plenipotentiary, the internuncios of the pope, and the Austrian minister at Constantinople, who is styled internuncio and minister plenipotentiary. The distinction of ministers into those of the first and those of the second order began to prevail towards the end of the fifteenth century, and is said to have been originally introduced by Louis XI. of France. [ENVOY.]

There is likewise a third order of diplomatic agents, which does not appear to have been recognised till towards the beginning of the eighteenth century. Those who belong to it are known by the title of Chargés d'Affaires (which is said to have been given by a prince, for the first time, to the Swedish minister at Constantinople, in 1748), Resident, or Minister. Their credentials are given them by the ministers of state in their own country, and are addressed to the ministers of the country they are sent to; except in the case of the diplomatic agents of the Hanseatic towns, whose credentials are addressed to the sovereign. In this order may also be included the ministers whom an ambassador or envoy, by virtue of an authority from his prince or state, appoints (usually under the title of Chargé d'Affaires) to conduct in his absence the affairs of his mission. [CHARGÉ D'AFFAIRES.]

The great Powers at the Congress of Vienna, in 1815, divided diplomatic agents into four classes: 1. Ambassadors, legates, or nuncios. 2. Envoys, ministers, and other agents accredited to sovereigns. 3. Chargés d'Affaires, accredited to the department of foreign affairs.

Consuls are not in general reckoned among diplomatic ministers; in some particular cases, however, where they have diplomatic duties to perform, they are accredited and treated as ministers. [CONSUL.]

It was long a disputed question, whether the smaller powers should communicate by means of ministers of the highest order. According to the practice of the present day, it is only in the intercourse between the great powers that ambassadors or ministers are employed. The United States of North America are usually represented at the courts of the great powers of the first class by ministers plenipotentiary, and at those of inferior rank by chargés d'affairs; and they have never sent a person of the rank of ambassador in the diplomatic sense. (Note, Kent's *Commentaries*, p. 40, vol. i.) The courts to which the British government sends an ambassador are those of Paris, Vienna, St. Petersburg and the Porte: to the courts of Prussia, Spain, the Two Sicilies, Holland, Portugal, Sweden, Hanover, Brazil, and to the United States, we send an 'Envoy Extraordinary and Minister Plenipotentiary;' to Sardinia, Denmark, Bavaria, Würtemberg, and Frankfort, an 'Envoy Extraordinary;' to Saxony, Tuscany, the Swiss Cantons, Greece, Mexico, and Buenos Ayres, a 'Minister Plenipotentiary;' to the states of New Grenada, Venezuela, Peru, Chili, and Texas, a 'Chargé d'Affaires.' The principal secretary of an ambassador is termed 'Secretary of Embassy,' and of envoys and ministers, 'Secretary of Legation.' Attached to each embassy there are two paid 'Attachés,' but in the embassy to the Ottoman Porte, when an 'envoy and minister' only is employed, there is only one paid attaché. The salary of the ambassador to the court of St. Petersburg is 11,000*l.* a-year; that of the secretary is 1000*l.*; and the two attachés receive 400*l.* and 300*l.* a-year respectively. The expenses of the other embassies are not quite so high. The salaries and pensions for diplomatic services are paid out of the consolidated fund, and are regulated by 2 & 3 Wm. IV. c. 116. When this act was passed, in 1832, the annual sum was fixed at 203,510*l.*; and it was provided that until the amount was reduced to 180,000*l.*, his majesty should not grant a larger annual amount in diplomatic pensions than 2000*l.*; and that when reduced, the whole annual expense of this branch of the public service should not exceed 180,000*l.* In 1843 the charge for services and allowances was 140,000*l.*, and for pensions 39,982*l.* 12*s.* 6*d.*; making a total of 179,982*l.* 12*s.* 6*d.*

The rules relating to the ceremonial due to diplomatic ministers are laid down at great length by writers on the subject. The first thing to be done by a minister is to announce his arrival to the minister for foreign affairs. He is then entitled to an audience of the prince, either public or private. The right of demanding at all times, during his stay, a private audience, is the distinction and important privilege of an ambassador. Should his only chance of carrying a measure depend on his having a private audience of the prince to whom he is sent, it is evident that this might be thwarted by the prince's ministers, who would of right be present at the audience of any minister below the rank of ambassador. A minister plenipotentiary, as well as an ambassador, can claim a public audience. He there presents his credentials to the prince, and hands them over to the minister for foreign affairs. Ministers and envoys also present their credentials to the prince in person. After he has been presented to the prince, a minister visits all the diplomatic body. But a minister of the highest order pays his respects in person only to those of the same rank—with ministers of a lower order he merely leaves his card. When an ambassador arrives at a court, all the diplomatists there, who are not of his own rank, call on him first.

Disputes have frequently arisen among ministers of the same rank about precedence. The rules by which it has at various times been endeavoured to settle the respective rank of the representative of each state, being founded on no solid principle, and not sanctioned by general acquiescence, it is unnecessary to mention. A rule which has long been partially adopted, may now be considered fully established: for at the Congress of

Vienna, in 1815, it was agreed by the eight powers which signed the treaty of Paris, that ministers in each class shall take precedence among themselves, according to the date of their official announcement at court, and that the order of signature of ministers to acts or treaties between several powers, that allow of the alternate, should be determined by lot. If the reader is curious to know wherein this precedence chiefly consists,—in what manner ministers are required to arrange themselves when they are standing up; in what, when they sit round a table: what order it behoves them to observe when they are placed in a row; what, when they walk in a line: how their rank is marked when their numbers are even; how, when their numbers are odd—we must refer him to the *Manuel Diplomatique* of the Baron Charles De Martens, chap. vi.

For further information on the subject of Ambassador, he may consult Wicquefort, *De l'Ambassadeur; Les Causes celèbres du droit des Gens*, by C. De Martens; and the writers on the law of nations, particularly Vattel and G. F. Martens; and likewise the *Cours de droit public*, par Pinheiro-Ferreira.

The functions of permanent Ambassadors, as above explained, appear to have originated in modern times. The ambassadors (πρέσβεις) sent by the Greek states, and those sent by the Romans (legati) or received by them, were limited to extraordinary occasions. Among the Romans, ambassadors were so often sent by foreign nations to them, and sent by the Romans to foreign states, that the law with respect to them (Jus Legationis; Livy, vi. 17) became in course of time well settled. Ambassadors to Rome were under the protection of the state, whether they came from a hostile or a friendly nation. Their reception and the length of their stay at Rome would of course depend on the nature of the relations between their state and Rome, and the objects of their mission. They were received by the Roman senate and transacted their business with that body. The senate appointed the ambassadors who were sent from Rome to foreign states. The expenses of such ambassadors were paid by the Roman state, but the ambassadors were also entitled to make certain demands from the provincials in their progress through a Roman province. This privilege gave rise in the later part of the republic to the practice of the Roman 'libera legatio,' which was the term applied to the permission obtained from the senate by a senator to leave Rome for distant parts on his own business. It was called 'libera,' free, apparently because the Senator had merely the title of Legatus without the duty; and it was called 'legatio' in respect of putting him on a like or similar footing with real legati as to the protection to his person and allowances to be claimed in the provinces. This privilege was often abused, both as to the length of time for which it was obtained and otherwise. A Lex Julia (of the Dictator Cæsar) limited the time to which these 'liberæ legationes' could be extended; but it is an incorrect inference from a passage of Cicero (*Ad Attic.* xv. 11) to conclude that the law fixed five years: the period which was fixed by the law is not stated. The 'libera legatio' is mentioned in the Pandect (50, tit. 7, s. 14), whence we may conclude that the practice continued to the time of Justinian, though probably in some modified form.

The word 'legatus' is a participle from the verb 'lego,' and signifies a person who is commissioned or empowered to do certain things.

AMENDMENT. [BILL IN PARLIAMENT.]

A'MNESTY is a word derived from the Greek ἀμνηστία, *amnéstia*, which, literally, signifies nothing more than nonremembrance. The word *amnestia* is not used by the earlier Greek writers; but the thing intended by it was expressed by the verbal form (μὴ μνησικακεῖν). The word ἀμνηστία occurs in Plutarch and Herodian. Some critics suppose that Cicero (*Philipp.* i. 1) alludes to his having used the word; but he may have expressed the thing without using the word *amnestia*. It occurs in the life of Aurelian by Vopiscus (c. 39), according to some editions in the Latin form, but it is possible that Vopiscus wrote the word in Greek characters, and it is doubtful whether the word was ever incorporated into the Latin lan-

guage. Nepos, in his life of Thrasybulus (c. 3), expresses the notion of an act of Amnesty by the words "lex oblivionis," and it is clear from a passage in Valerius Maximus (iv. 1), that the word was not adopted into the Latin language when Valerius wrote, whatever that time may be.

The notion of an amnesty among the Greeks was a declaration of the person or persons who had newly acquired or recovered the sovereign power in a state, by which they pardoned all persons who composed, supported, or obeyed the government which had been just overthrown. A declaration of this kind may be either absolute and universal, or it may except certain persons specifically named, or certain classes of persons generally described. Thus, in Athens, when Thrasybulus had destroyed the oligarchy of the Thirty Tyrants, and had restored the democratical form of government, an exceptive amnesty of past political offences was declared, from the operation of which the Thirty themselves, and some few persons who had acted in the most invidious offices under them, were excluded. (Xenophon, *Hellen.* ii. 4, 38; Isocrates, *Against Callimachus*, c. 1.) So when Bonaparte returned from Elba in 1815, he published an amnesty, from which he excluded thirteen persons, whom he named in a decree published at Lyon. The act of indemnity, passed upon the restoration of Charles II., by which the persons actually concerned in the execution of his father were excluded from the benefit of the royal and parliamentary pardon, is an instance of an amnesty from which a class of persons were excepted by a general description and not by name. Of a like nature was the law passed by the French Chambers in January, 1816, upon the return of Louis XVIII. to the throne of France after the victory at Waterloo, which offered a complete amnesty to "all persons who had directly or indirectly taken part in the rebellion and usurpation of Napoleon Bonaparte," with the exception of certain persons, whose names had been previously mentioned in a royal ordinance as the most active partisans of the usurper. It was objected to this French law of amnesty, that it did not point out with sufficient perspicuity the individuals who were to be excepted from its operation. Instead of confining itself to naming the offenders, it excepted whole classes of offences, by which means a degree of uncertainty and confusion was occasioned, which much retarded the peaceable settlement of the nation. "In consequence of this course," says M. de Châteaubriand in a pamphlet published soon after the event, "punishment and fear have been permitted to hover over France; wounds have been kept open, passions exasperated, and recollections of enmity awakened." The act of indemnity, passed at the accession of Charles II., was not liable to this objection, by the distinctness of which, as Dr. Johnson said, "the flutter of innumerable bosoms was stilled," and a state of public feeling promoted, extremely favourable to the authority and quiet government of the restored prince.

AMPHICTYONS (Ἀμφικτύονες), members of a celebrated council in ancient Greece, called the Amphictyonic Council.

According to the popular story, this council was founded by Amphictyon, son of Deucalion, who lived, if he lived at all, many centuries before the Trojan war. It is supposed, by a writer quoted by Pausanias (x. 8), to derive its name, with a slight alteration, from a word signifying "settlers around a place." Strabo, who professes to know nothing of its founder, says that Acrisius, the mythological king of Argos, fixed its constitution and regulated its proceedings. Amidst the darkness which hangs over its origin, we discover with certainty that it was one of the earliest institutions in Greece. No full or clear account has been given of it during any period of its existence by those who had the means of informing us. The fullest information is supplied by Æschines the orator; but before any attempt is made, by the help of some short notices from other writers, and of conjecture, to trace its earlier history, it may not be amiss to state what is certainly known of this council as it existed in his time.

According to Æschines, the Greek nations which had a right to be represented

in the council were the Thessalians, Bœotians, Dorians, Ionians, Perrhæbians, Magnesians, Locrians, Œtæans, Phthiots, Malians, Phocians. Each nation was represented by certain sovereign states, of which it was supposed to be the parent: thus Sparta, conjointly with other Dorian states, represented the Dorian nation. Amongst the states thus united in representing their common nation, there was a perfect equality. Sparta enjoyed no superiority over Dorium and Cytinium, two inconsiderable towns in Doris; and the deputies of Athens, one of the representatives of the Ionian nation, sat in the council on equal terms with those of Eretria and Eubœa, and of Priene, an Ionian colony in Asia Minor. From a rather doubtful passage in Æschines (*De Fals. Leg.* 43), compared with a statement in Diodorus (xvi. 60), it seems that each nation, whatever might be the number of its constituent states, had two, and only two votes. The council had two regular sessions in each year, meeting in the spring at Delphi, and in the autumn near Pylæ, otherwise called Thermopylæ; but special meetings were sometimes called before the usual time. From its meeting at Pylæ, a session of Amphictyons was called a Pylæa, and the deputies were called Pylagoræ, that is, councillors at Pylæ. There were also deputies distinguished by the name of Hieromnemons, whose office it was, as their name implies, to attend to matters pertaining to religion. Athens sent three Pylagoræ and one Hieromnemon. The former were appointed for each session; the latter probably for a longer period, perhaps for the year, or two sessions. The council entertained charges laid before it in relation to offences committed against the Delphic god, made decrees thereupon, and appointed persons to execute them. These decrees, as we learn from Diodorus (xvi. 24), were registered at Delphi. The oath taken by the deputies bound the Amphictyons not to destroy any of the Amphictyonic cities, or to debar them from the use of their fountains in peace or war; to make war on any who should transgress in these particulars. and to destroy their cities; to punish with hand, foot, voice, and with all their might, any who should plunder the property of the god (the Delphic Apollo), or should be privy to or devise anything against that which was in his temple. This is the oldest form of the Amphictyonic oath which has been recorded, and is expressly called by Æschines the ancient oath of the Amphictyons. It has inadvertently been attributed to Solon by Mr. Mitford, who has apparently confounded it with another oath imposed on a particular occasion. An ordinary council consisted only of the deputed Pylagoræ and Hieromnemons; but on some occasions at Delphi, all who were present with the Amphictyonic deputies to sacrifice in the temple and consult the oracle of the god, were summoned to attend, and then it received the name of an *ecclesia*, or assembly. Beside the list of Amphictyonic nations given by Æschines, we have one from Pausanias, which differs a little from that of Æschines, and another from Harpocration, which differs slightly from both. The orator, whilst he speaks generally of twelve nations, names only eleven. Strabo agrees with him in the larger number. It is further remarkable, that whilst Æschines places the Thessalians at the head of his list, Demosthenes (*De Pace*, p. 62) expressly excludes them from a seat in the council.

Æschines has left us much in the dark as to the usual mode of proceeding in the Amphictyonic sessions; and we shall look elsewhere in vain for certain information. It should seem that all the Pylagoræ sat in the council and took part in its deliberations; but if the common opinion mentioned above, respecting the two votes allowed to each nation be correct, it is certain that they did not all vote. The regulations according to which the decisions of the twelve nations were made can only be conjectured. We know that the religious matters which fell under the jurisdiction of the Amphictyonic body were managed principally, at least, by the Hieromnemons, who appear, from a verse in Aristophanes (*Nub.* 613), to have been appointed by lot, but we are not as well informed respecting the limits which separated their duties from those of the Pylagoræ, nor respecting the relative rank which they held in

the council. (Æschines, *Contr. Ctes.* p. 68-72; *Fals. Leg.* p. 43.) The little that is told is to be found for the most part in the ancient lexicographers and scholiasts, or commentators, who knew perhaps nothing about the matter, and whose accounts are sufficiently perplexing to give room for great variety of opinions among modern writers. Some have seemed to themselves to discover that the office of the Hieromnemons was of comparatively late creation, that these new deputies were of higher rank than the Pylagoræ, and that one of them always presided in the council; others again have supposed—what, indeed, an ancient lexicographer has expressly asserted—that they acted as secretaries or scribes. Two Amphictyonic decrees are found at length in the oration of Demosthenes on the crown, both of which begin thus: "When Cleinagoras was priest, at the vernal Pylæa, it was resolved by the Pylagoræ and the Synedri (joint councillors) of the Amphictyons, and the common body of the Amphictyons." Some have assumed that Cleinagoras the priest was the presiding Hieromnemon, and others that the Hieromnemons are comprehended under the general name of Pylagoræ. Æschines again has mentioned a decree in which the Hieromnemons were ordered to repair at an appointed time to a session at Pylæ, carrying with them the copy of a certain decree lately made by the council. Of the council, as it existed before the time of Æschines, a few notices are to be found in the ancient historians, some of which are not unimportant. According to Herodotus (vii. 200) the council held its meetings near Thermopylæ, in a plain which surrounded the village of Anthela, and in which was a temple dedicated to the Amphictyonic Ceres; to whom, as Strabo tells us (ix. 429), the Amphictyons sacrificed at every session. This temple, according to Callimachus (*Ep.* 41), was founded by Acrisius; and hence arose, as Müller supposes in his history of the Dorians (vol. i. p. 289, English translation), the tradition mentioned above.

We are told by Strabo (ix. 418) that after the destruction of Crissa by an Amphictyonic army, under the command of Eurylochus, a Thessalian prince, the Amphictyons instituted the celebrated games, which from that time were called the Pythian, in addition to the simple musical contests already established by the Delphians. Pausanias also (x. 7) attributes to the Amphictyons both the institution and subsequent regulation of the games; and it is supposed by the most skilful critics, that one occasion of the exercise of this authority, recorded by Pausanias, can be identified with the victory of Eurylochus mentioned by Strabo. According to this supposition, the Crissæan and the celebrated Cirrhæan war are the same, and Eurylochus must have lived as late as B.C. 591. But the history of these matters is full of difficulty, partly occasioned by the frequent confusion of the names of Crissa and Cirrha.

From the scanty materials left us by the ancient records, the following sketch of the history of this famous council is offered to the reader, as resting on some degree of probability:—

The council was originally formed by a confederacy of Greek nations or tribes, which inhabited a part of the country afterwards called Thessaly. In the lists which have come down to us of the constituent tribes, the names belong for the most part to those hordes of primitive Greeks which are first heard of, and some of which continued to dwell north of the Malian bay. The bond of union was the common worship of Ceres, near whose temple at Anthela its meetings were held. With the worship of the goddess was afterwards joined that of the Delphic Apollo; and thenceforth the council met alternately at Delphi and Pylæ. Its original seat and old connections were kept in remembrance by the continued use of the term Pylæa, to designate its sessions wherever held: though eventually the Delphic god enjoyed more than an equal share of consideration in the confederacy. It may be remarked that the Pythian Apollo, whose worship in its progress southwards can be faintly traced from the confines of Macedonia, was the peculiar god of the Dorians, who were of the Hellenic race; whilst the worship of Ceres was probably of Pelasgic origin,

and appears at one time to have been placed in opposition to that of Apollo, and in great measure to have retired before it. There is no direct authority for asserting that the joint worship was not coeval with the establishment of the council; but it seems probable from facts, which it is not necessary to examine here, that an Amphictyonic confederacy existed among the older residents, the worshippers of Ceres, in the neighbourhood of the Malian bay, before the hostile intruders with their rival deity were joined with them in a friendly coalition. The council met for religious purposes, the main object being to protect the temples and maintain the worship of the two deities. With religion were joined, according to the customs of the times, political objects; and the jurisdiction of the Amphictyons extended to matters which concerned the safety and internal peace of the confederacy. Hence the Amphictyonic laws, the provisions of which may be partly understood from the terms of the Amphictyonic oath. Confederacies and councils, similar to those of the Amphictyons, were common among the ancient Greeks. Such were those which united in federal republics the Greek colonists of Asia Minor, of the Æolian, Ionian, and Dorian nations. Such also was the confederacy of seven states whose council met in the temple of Neptune in the island of Calauria, and which is even called by Strabo (viii. 374) an Amphictyonic council.

The greater celebrity of the northern Amphictyons is attributable partly to the superior fame and authority of the Delphic Apollo; still more perhaps to their connection with powerful states which grew into importance at a comparatively late period. The migrating hordes, sent forth from the tribes of which originally or in very early times the confederacy was composed, carried with them their Amphictyonic rights, and thus at every remove lengthened the arms of the council. The great Dorian migration especially planted Amphictyonic cities in the remotest parts of Southern Greece. But this diffusion, whilst it extended its fame, was eventually fatal to its political authority. The early members, nearly equal perhaps in rank and power, whilst they remained in the neighbourhood of Mounts Œta and Parnassus, might be willing to submit their differences to the judgment of the Amphictyonic body. But the case was altered when Athens and Sparta became the leading powers in Greece. Sparta, for instance, would not readily pay obedience to the decrees of a distant council, in which the deputies of some inconsiderable towns in Doris sat on equal terms with their own. Accordingly in a most important period of Grecian history, during a long series of bloody contests between Amphictyonic states, we are unable to discover a single mark of the council's interference. On the other hand, we have from Thucydides (i. 112) a strong negative proof of the insignificance into which its authority had fallen. The Phocians (B.C. 448) possessed themselves by force of the temple of Apollo at Delphi; were deprived of it by the Lacedæmonians, by whom it was restored to the Delphians; and were again replaced by the Athenians. In this, which is expressly called by the historian a sacred war, not even an allusion is made to the existence of an Amphictyonic council. After the decay of its political power, there still remained its religious jurisdiction; but it is not easy to determine its limits or the objects to which it was directed. In a treaty of peace made (B. C. 421) between the Peloponnesians and the Athenians (Thucydides, v. 17), it was provided that the temple of Apollo at Delphi and the Delphians should be independent. This provision, however, appears to have had reference especially to the claims of the Phocians to include Delphi in the number of their towns, and not to have interfered in any respect with the superintendence of the temple and oracle, which the Amphictyons had long exercised in conjunction with the Delphians. We have seen that the Amphictyons were charged in the earliest times with the duty of protecting the temple and the worship of the god. But the right of superintendence, of regulating the mode of proceeding in consulting the oracle, in making the sacrifices, and in the celebration of the games, was apparently of much later origin, and

may, with some probability, be dated from the victory gained by Eurylochus and the Amphictyonic army. The exercise of this right had the effect of preserving to the council permanently a considerable degree of importance. In early times the Delphic god had enjoyed immense authority. He sent out colonies, founded cities, and originated weighty measures of various kinds. Before the times of which we have lately been speaking, his influence had been somewhat diminished; but the oracle was still most anxiously consulted both on public and private matters. The custody of the temple was also an object of jealous interest on account of the vast treasures contained within its walls.

The Greek writers, who notice the religious jurisdiction of the council, point our attention almost exclusively to Delphi; but it may be inferred from a remarkable fact mentioned by Tacitus (*Ann.* iv. 14), that it was much more extensive. The Samians, when petitioning in the time of the Emperor Tiberius for the confirmation of a certain privilege to their temple of Juno, pleaded an ancient decree of the Amphictyons in their favour. The words of the historian seem to imply that the decree was made at an early period in the existence of Greek colonies in Asia Minor, and he says that the decision of the Amphictyons on all matters had at that time pre-eminent authority.

The sacred wars, as they were called, which were originated by the Amphictyons in the exercise of their judicial authority, can here be noticed only so far as they help to illustrate the immediate subject of inquiry. The Cirrhæan war, in the time of Solon, has already been incidentally mentioned. The port of Cirrha, a town on the Crissæan bay, afforded the readiest access from the coast to Delphi. The Cirrhæans, availing themselves of their situation, grievously oppressed by heavy exactions the numerous pilgrims to the Delphic temple. The Amphictyons, by direction of the oracle, proclaimed a sacred war to avenge the cause of the god; that is, to correct an abuse which was generally offensive, and particularly injurious to the interests of the Delphians. Cirrha was destroyed, the inhabitants were reduced to slavery, their lands consecrated to Apollo, and a curse was pronounced on all who should hereafter cultivate them. We are told that Solon acted a prominent part on this occasion, and that great deference was shown to his counsels. Mr. Mitford, indeed, has discovered without help from history, which is altogether silent on the subject, that he was the author of sundry important innovations, and that he in fact remodelled the constitution of the Amphictyonic body. He has even been able to catch a view of the secret intentions of the legislator, and of the political principles which guided him. But in further assigning to Solon the command of the Amphictyonic army, he is opposed to the direct testimony of the ancient historians.

From the conclusion of the Cirrhæan war to the time of Philip of Macedon, an interval exceeding two centuries, we hear little more of the Amphictyons, than that they rebuilt the temple at Delphi, which had been destroyed by fire B.C. 548; that they set a price on the head of Ephialtes, who betrayed the cause of the Greeks at Thermopylæ, and conferred public honours on the patriots who died there; and that they erected a monument to the famous diver Scyllias as a reward for the information which, as the story goes, he conveyed under water from the Thessalian coast to the commanders of the Grecian fleet at Artemisium. If Plutarch may be trusted, the power of the Amphictyons had not at this time fallen into contempt. When a proposition was made by the Lacedæmonians to expel from the council all the states which had not taken part in the war against the Persians, it was resisted successfully by Themistocles, on the ground that the exclusion of three considerable states, Argos, Thebes, and the Thessalians, would give to the more powerful of the remaining members a preponderating influence in the council, dangerous to the rest of Greece.

After having, for a long period, nearly lost sight of the Amphictyons in history, we find them venturing, in the fallen fortunes of Sparta, to impose a heavy fine on that state as a punishment for an old offence, the seizure of the Theban Cadmeia, the payment of which, how-

ever, they made no attempt to enforce. In this case, as well as in the celebrated Phocian war, the Amphictyonic council can be considered only as an instrument in the hands of the Thebans, who, after their successful resistance to Sparta, appear to have acquired a preponderating influence in it, and who found it convenient to use its name and authority, whilst prosecuting their own schemes of vengeance or ambition. Though the charge brought against the Phocians was that of impiety in cultivating a part of the accursed Cirrhæan plain, there is no reason to think that any religious feeling was excited, at least in the earlier part of the contest; and Amphictyonic states were eagerly engaged as combatants on both sides. For an account of this war the reader is referred to a general history of Greece. The council was so far affected by the result, that it was compelled to receive a new member, and in fact a master, in the person of Philip of Macedon, who was thus rewarded for his important services at the expense of the Phocians, who were expelled from the confederacy. They were, however, at a subsequent period restored, in consequence of their noble exertions in the cause of Greece and the Delphic god against the Gauls. It may be remarked, that the testimony of the Phocian general Philomelus, whatever may be its value, is rather in favour of the supposition that the council was not always connected with Delphi. He justifies his opposition to its decrees, on the ground that the right which the Amphictyons claimed was comparatively a modern usurpation. In the case of the Amphissians, whose crime was similar to that of the Phocians, the name of the Amphictyons was again readily employed; but Æschines, who seems to have been the principal instigator of the war, had doubtless a higher object in view than that of punishing the Amphissians for impiety.

The Amphictyonic council long survived the independence of Greece, and was, probably, in the constant exercise of its religious functions. So late as the battle of Actium, it retained enough of its former dignity at least to induce Augustus to claim a place in it for his new city of Nicopolis. Strabo says that in his time it had ceased to exist. If his words are to be understood literally, it must have been revived; for we know from Pausanias (x. 8), that it was in existence in the second century after Christ. It reckoned at that time twelve constituent states, who furnished in all thirty deputies; but a preponderance was given to the new town of Nicopolis, which sent six deputies to each meeting; Delphi sent two to each meeting, and Athens one deputy: the other states sent their deputies according to a certain cycle, and not to every meeting. For the time of its final dissolution we have no authority on which we can rely.

It is not easy to estimate with much certainty the effects produced on the Greek nation generally by the institution of this council. It is, however, something more than conjecture that the country which was the seat of the original members of the Amphictyonic confederacy was also the cradle of the Greek nation, such as it is known to us in the historical ages. This country was subject to incursions from barbarous tribes, especially on its western frontier, probably of a very different character from the occupants of whom we have been speaking. In the pressure of these incursions, the Amphictyonic confederacy may have been a powerful instrument of preservation, and must have tended to maintain at least the separation of its members from their foreign neighbours, and so to preserve the peculiar character of that gifted people, from which knowledge and civilization have flowed over the whole western world. It may also have aided the cause of humanity; for it is reasonable to suppose that in earlier times differences between its own members were occasionally composed by interference of the council; and thus it may have been a partial check on the butchery of war, and may at least have diminished the miseries resulting from the cruel lust of military renown. In one respect its influence was greatly and permanently beneficial. In common with the great public festivals, it helped to give a national unity to numerous independent states, of which the Greek nation was composed. But it had a

merit which did not belong to those festivals in an equal degree. It cannot be doubted that the Amphictyonic laws, which regulated the originally small confederacy, were the foundation of that international law which was recognised throughout Greece; and which, imperfect as it was, had some effect in regulating beneficially national intercourse among the Greeks in peace and war, and, so far as it went, was opposed to that brute force and lawless aggression which no Greek felt himself restrained by any law from exercising towards those who were not of the Greek name. To the investigator of that dark but interesting period in the existence of the Greek nation which precedes its authentic records, the hints which have been left us on the earlier days of this council, faint and scanty as they are, have still their value. They contribute something to those fragments of evidence with which the learning and still more the ingenuity of the present generation are converting mythical legends into a body of ancient history.

ANARCHY (from the Greek ἀναρχία, *anárchia*, absence of government) properly means the entire absence of political government; the condition of a collection of human beings inhabiting the same country, who are not subject to a common sovereign. Every body of persons living in a *state of nature* (as it is termed) is in a state of anarchy; whether that state of nature should exist among a number of persons who have never known political rule, as a horde of savages, or should rise in a political society in consequence of resistance on the part of the subjects to the sovereign, by which the person or persons in whom the sovereignty is lodged are forcibly deprived of that power. Such intervals are commonly of short duration; but after most revolutions, by which a violent change of government has been effected, there has been a short period during which there was no person or body of persons who exercised the executive or legislative sovereignty,—that is to say, a period of anarchy.

Anarchy is sometimes used in a transferred or improper sense to signify the condition of a political society, in which, according to the writer or speaker, there has been an undue remissness or supineness of the sovereign, and especially of those who wield the executive sovereignty. In the former sense, anarchy means the state of a body of persons among whom there is *no* political government; in its second sense, it means the state of a political society in which there has been a *deficient* exercise of the sovereign power. As an insufficiency of government is likely to lead to no government at all, the term *anarchy* has, by a common exaggeration, been used to signify the small degree, where it properly means the entire absence. [SOVEREIGNTY.]

ANATOMY ACT. Before the passing of 2 & 3 Will. IV. c. 75, on the 1st of August, 1832, the medical profession was placed in a situation at once anomalous and discreditable to the intelligence of the country. The law rendered it illegal for the medical practitioner or teacher of anatomy to possess any human body for the purposes of dissection, save that of murderers executed pursuant to the sentence of a court of justice, whilst it made him liable to punishment for ignorance of his profession; and while the charters of the medical colleges enforced the duty of teaching anatomy by dissection, the law rendered such a course impracticable. But as the interests of society require anatomy to be taught, the laws were violated, and a new class of offenders and new crimes sprung up as a consequence of legislation being inconsistent with social wants. By making anatomical dissection a penalty for crime, the strong prejudices which existed respecting dissection were magnified tenfold. This custom existed in England for about three centuries, having commenced early in the sixteenth century, when it was ordered that the bodies of four criminals should be assigned annually to the corporation of barber-surgeons. The 2 & 3 Will. IV. c. 75, repealed s. 4, 9 Geo. IV. c. 31, which empowered the court, when it saw fit, to direct the body of a person convicted of murder to be dissected after execution. Bodies are now obtained for anatomical purposes under the following regulations enacted in 2 & 3 Will. IV. c.

75, which is entitled 'An act for regulating Schools of Anatomy.' The preamble of this act recites that the legal supply of human bodies for anatomical examination was insufficient, and that in order further to supply human bodies for such purpose various crimes were committed, and lately murder, for the sole object of selling the bodies of the persons so murdered. The act then empowers the principal Secretary of State, and the Chief Secretary for Ireland, to grant a licence to practise anatomy to any member or fellow of any college of physicians or surgeons, or to any graduate or licentiate in medicine, or to any person lawfully qualified to practise medicine, or to any professor or teacher of anatomy, medicine, or surgery; or to any student attending any school of anatomy, on application countersigned by two justices of the place where the applicant resides, certifying that to their knowledge or belief such person is about to carry on the practice of anatomy. (s. 1.) Notice is to be given of the place where it is intended to examine bodies anatomically, one week at least before the first receipt or possession of a body. The Secretary of State appoints inspectors of places where anatomical examinations are carried on, and they make a quarterly return of every deceased person's body removed to each place in their district where anatomy is practised, distinguishing the sex, and the name and age. Executors and others (not being undertakers, &c.) may permit the body of a deceased person, lawfully in their possession, to undergo anatomical examination, unless, to the knowledge of such executors or others, such person shall have expressed his desire, either in writing or verbally during the illness whereof he died, that his body might not undergo such examination; and unless the surviving husband or wife, or any known relative of the deceased person shall require the body to be interred without. Although a person may have directed his body after death to be examined anatomically, yet if any surviving relative objects, the body is to be interred without undergoing such examination. (s. 8.) When a body may be lawfully removed for anatomical examination, such removal is not to take place until forty-eight hours after death, nor until twenty-four hours' notice after death to the anatomical inspector of the district of the intended removal, such notice to be accompanied by a certificate of the cause of death, signed by the physician, surgeon, or apothecary who attended during the illness whereof the deceased person died; or if not so attended, the body is to be viewed by some physician, surgeon, or apothecary after death, and who shall not be concerned in examining the body after removal. Their certificate is to be delivered with the body to the party receiving the same for examination, who within twenty-four hours must transmit the certificate to the inspector of anatomy for the district, accompanied by a return stating at what day and hour and from whom the body was received, the date and place of death, the sex, and (as far as known) the name, age, and last abode of such person; and these particulars, with a copy of the certificate, are also to be entered in a book, which is to be produced whenever the inspector requires. The body on being removed is to be placed in a decent coffin or shell and be removed therein; and the party receiving it is to provide for its interment after examination in consecrated ground, or in some public burial-ground of that religious persuasion to which the person whose body was removed belonged; and a certificate of the interment is to be transmitted to the inspector of anatomy for the district within six weeks after the body was received for examination. Offences against the act may be punished with imprisonment for not less than three months, or a fine of not more than 50*l.*

The supply, under this act, of the bodies of persons who die friendless in poor-houses and hospitals and elsewhere, is said to be sufficient for the present wants of the teachers of anatomy. The enormities which were formerly practised by "resurrection-men" and "burkers" have ceased. The number of bodies annually supplied in London for the purposes of dissection amounts to 600.

ANCIENT DEMESNE. [MANOR.]

ANGLICAN CHURCH. [ESTABLISHED CHURCH OF ENGLAND AND IRELAND.]

ANNALS, in Latin *Annales*, is derived from *annus*, a year. Cicero, in his second book, 'On an Orator' (*De Oratore*, 12), informs us, that from the commencement of the Roman state down to the time of Publius Mucius, it was the custom for the Pontifex Maximus annually to commit to writing the transactions of the past year, and to exhibit the account publicly on a tablet (*in albo*) at his house, where it might be read by the people. Mucius was Pontifex Maximus in the beginning of the seventh century from the foundation of Rome. These are the registers, Cicero adds, which we now call the 'Annales Maximi,' the great annals. It is probable that these annals are the same which are frequently referred to by Livy under the title of the 'Commentarii Pontificum,' and by Dionysius under that of ἱέραι δέλτοι, or 'Sacred Tablets.' Cicero, both in the passage just quoted, and in another in his first book 'On Laws' (*De Legibus*), speaks of them as extremely brief and meagre documents. It may, however, be inferred from what he says, that parts of them at least were still in existence in his time, and some might be of considerable antiquity. Livy says (vi. 1) that most of the Pontifical Commentaries were lost at the burning of the city after its capture by the Gauls. It is evident, however, that they were not in Livy's time to be found in a perfect state even from the date of that event (B.C. 390); for he is often in doubt as to the succession of magistrates in subsequent periods, which it is scarcely to be supposed he could have been, if a complete series of these annals had been preserved.

The word annals, however, was also used by the Romans in a general sense; and it has been much disputed what was the true distinction between annals and history. Cicero, in the passage in his work 'De Oratore,' says, that the first narrators of public events, both among the Greeks and Romans, followed the same mode of writing with that in the 'Annales Maximi;' which he further describes as consisting in a mere statement of facts briefly and without ornament. In his work 'De Legibus' he characterizes history as something distinct from this, and of which there was as yet no example in the Latin language. It belongs, he says, to the highest class of oratorical composition ("opus oratorium maxime").

This question has been considerably perplexed by the division which is commonly made of the historical works of Tacitus, into books of Annals and books called Histories. As what are called his 'Annals' are mainly occupied with events which happened before he was born, while in his 'History' he relates those of his own time, some critics have laid it down as the distinction between history and annals, that the former is a narration of what the writer has himself seen, or at least been contemporary with, and the latter of transactions which had preceded his own day.

Aulus Gellius (v. 18), in his discussion on the difference between Annals and History, says that some consider that both History and Annals are a record of events, but that History is properly a narrative of such events as the narrator has been an eye-witness of. He adds that Verrius Flaccus, who states that some people hold this opinion, doubts about its soundness, though Verrius thinks that it may derive some support from the fact that, in Greek, History (ἱστορία) properly signifies the obtaining of the knowledge of present events. But Gellius considers that all annals are histories, though all histories are not annals; just as all men are animals, but all animals are not men. Accordingly Histories are considered to be the exposition or showing forth of events; Annals, to contain the events of several successive years, each event being assigned to its year. The distinction which the historian Sempronius Asellio made is this, as quoted by Gellius—"Between those who had intended to leave annals, and those who had attempted to narrate the acts of the Roman people, there was this difference:—Annals only affected to show what events took place in each year, a labour like that of those who write diaries, which the Greeks call Ephemerides. To us it seemed appropriate not merely to state what had been done, but also with what design and on what principle it had been done." Accordingly Annals are materials for History. [HISTORY.]

Tacitus has himself in one passage intimated distinctly what he himself understood annals to be, as distinguished from history. In his 'Annals' (commonly so called) iv. 71, he states his reason for not giving the continuation and conclusion of a particular narrative which he had commenced, to be simply the necessity under which he had laid himself by the form of composition he had adopted of relating events strictly in the order of time, and always finishing those of one year before entering upon those of another. The substance of his remark is, that "the nature of his work required him to give each particular under the year in which it actually happened." This, then, was what Tacitus conceived to be the task which he had undertaken as a writer of annals, "to keep everything to its year." Had he been writing a history (and in the instance quoted above, he insinuates he had the inclination, if not the ability, for once to act the historian), he would have considered himself at liberty to pursue the narrative he was engaged with to its close, not stopping until he had related the whole. But remembering that he professed to be no more than an annalist, he restrains himself, and feels it to be his business to keep to the events of the year.

It is of no consequence that on other occasions Tacitus may have deviated somewhat from the strict line which he thus lays down for himself—that he may have for a moment dropped the annalist and assumed the historian. If it should even be contended that his narrative does not in general exhibit a more slavish submission to the mere succession of years than others that have been dignified with the name of historians, that is still of no consequence. He may have satisfied himself with the more humble name of an annalist, when he had a right to the prouder one of an historian; or the other works referred to may be wrongly designated histories. It may be, for instance, that he himself is as much an historian in what are called his 'Annals' as he is in what is called his 'History.'

In iii. 65, of his 'Annals,' Tacitus tells us that it formed no part of the plan of his 'Annals' to give at full length the sentiments and opinions of individuals, except they were signally characterized either by some honourable or disgraceful traits. In chap. 22 of the treatise on Oratory, attributed to Tacitus, the author expresses his opinion of the general character of the style of ancient annals; and (*Annal.* xiii. 31) he carefully marks the distinction between events fit to be incorporated into annals and those which were only adapted to the Acta Diurna. [Act.]

The distinction we have stated between history-writing and annal-writing seems to be the one that has been commonly adopted. An account of events digested into so many successive years is usually entitled, not a history, but annals. The 'Ecclesiastical Annals' of Baronius, and the 'Annals of Scotland,' by Sir David Dalrymple (Lord Hailes), are well-known examples. In such works so completely is the succession of years considered to be the governing principle of the narrative, that this succession is sometimes preserved unbroken even when the events themselves would not have required that it should, the year being formally enumerated although there is nothing to be told under it. The year is at least always stated with equal formality whether there be many events or hardly any to be related as having happened in it. In this respect annals differ from a catalogue of events with their dates, as, for instance, the 'Parian Chronicle.' The object of the latter is to intimate in what year certain events happened; of the former, what events happened in each year. The history of the Peloponnesian war, by Thucydides, has the character of annals. The events are arranged distinctly under each year, which is further divided into summers and winters. All political reflections are, for the most part, placed in the mouths of the various leaders on each side.

In the 'Rheinisches Museum für Philologie,' &c. ii. Jahrg. 2 heft. pp. 293, &c., there is a disquisition, by Niebuhr, on the distinction between History and Annals, in which he limits the latter nearly as has been done above. There is a translation of it in the sixth number (for May, 1833) of the 'Cambridge Philological Museum.'

It scarcely need be noticed that the term annals is popularly used in a very

loose sense for a record of events in whatever form it may be written—as when Gray speaks of—

"The short and simple annals of the poor."

In the Romish church a mass said for any person every day during a whole year was anciently called an annal; and sometimes the same word was applied to a mass said on a particular day of every year. (Du Cange, *Glossarium ad Scriptores Mediæ et Infimæ Latinitatis.*)

ANNA'TES, from *annus*, a year, a sum paid by the person presented to a church living, being the estimated value of the living for a whole year. It is the same thing that is otherwise called Primitiae, or First-Fruits. [FIRST-FRUITS.]

ANNUITY. An annuity consists in the payment of a certain sum of money yearly, which is charged upon the person or personal estate of the individual from whom it is due; if it is charged upon his real estate, it is not an annuity, but a rent. [RENT.] A sum of money payable occasionally does not constitute an annuity; the time of payment must recur at certain stated periods, but it is not necessary that these periods should be at the interval of a year; an annuity may be made payable quarterly, or half-yearly (as is very generally the case), or at any other aliquot portion of a year; and it may even be made payable once in two, three, twenty, or any other number of years.

It was not unusual among the Romans to give by way of legacy certain annual payments, which were a charge upon the heres or co-heredes: a case is recorded in which a husband binds his heredes to pay his wife, during her life, ten aurei yearly. The wife survived the husband five years and four months, and a question was raised, whether the entire legacy for the sixth year was due, and Modestinus gave it as his opinion that it was due. There were also cases in which the heres was bound to allow another yearly the use of a certain piece of land; but this bears no resemblance to the annuity of the English law, which, as stated above, is essentially a periodical payment in money. (*Digest*, xxxiii. tit. 1, *De Annuis Legatis et Fideicommissis*; Domat's *Civil Law*, 2nd part, book iv. tit. 2, sec. 1.) In the middle ages annuities were frequently given to professional men as a species of retainer; and in more modern times they have been very much resorted to as a means of borrowing money. When the person who borrows undertakes, instead of interest, to pay an annuity, he is styled the *grantor;* the person who lends, being by the agreement entitled to receive the payments, is called the *grantee* of the annuity. This practice seems to have been introduced on the Continent with the revival of commerce, at a time when the advantages of borrowing were already felt, but the taking of interest was still strictly forbidden. In the fifteenth century contracts of this kind were decided by the popes to be lawful, and were recognised as such in France, even though every species of interest upon money borrowed was deemed usurious. (Domat's *Civil Law*, 1st part, book i. tit. 6.) The commercial states of Italy early availed themselves of this mode of raising money, and their example has since been followed in the national debts of other countries. [NATIONAL DEBT; FUNDS; STOCKS.]

An annuity may be created either for a term of years, for the life or lives of any persons named, or in perpetuity; and in the last case, though, as in all others, the annuity as to its security is personal only, yet it may be so granted as to descend in the same manner as real property; and hence such an annuity is reckoned among incorporeal hereditaments.

A perpetual annuity, granted in consideration of a sum of money advanced, differs from interest in this, that the grantee has no right to demand back his principal, but must be content to receive the annuity which he has purchased, as long as it shall please the other party to continue it:—but the annuity is in its nature redeemable at the option of the grantor, who is thus at liberty to discharge himself from any further payments by returning the money which he has borrowed. It may, however, be agreed between the parties (as it generally has been in the creation of our own national debt, which consists chiefly of

annuities of this sort) that the redemption shall not take place for a certain number of years. The number of years within which, according to the present law of France, a perpetual annuity (rente constituée en perpétuel) may be made irredeemable, is limited to ten. (*Code Civil*, art. 1911.)

An annuity for life or years is not redeemable in the same manner; but it may be agreed by the parties to the contract that it shall be redeemable on certain terms; or it may afterwards be redeemed by consent of both parties; and where the justice of the case requires it (where there has been fraud, for instance, or the bargain is unreasonable), a court of equity will decree a redemption. When such an annuity is granted in consideration of money advanced, the annual payments may be considered as composed of two portions, one being in the nature of interest, the other a return of a portion of the principal, so calculated, that when the annuity shall have determined, the whole of the principal will be repaid. Annuities for life or years, being the only security that can be given by persons who have themselves a limited interest in their property, are frequently made in consideration of a loan. Besides this advantage, annuities for life, inasmuch as they are attended with risk, are not within the reach of the usury laws, and are therefore often used in order to evade them; and the legislature has accordingly required that certain formalities should be observed in creating them. It is enacted (by stat. 53 Geo. III. c. 141) "That every instrument by which an annuity for life is granted shall be null and void, unless within thirty days after the execution thereof there shall be enrolled in the High Court of Chancery a memorial containing the date, the names of the parties and witnesses, and the conditions of the contract; and if the lender does not really and truly advance the whole of the consideration money, that is, if part of it is returned, or is paid in notes which are afterwards fraudulently cancelled, or is retained on pretence of answering future payments; or if, being expressed to be paid in money, it is in fact paid in goods, the person charged with the annuity (that is, the borrower) may, if any action should be brought against him for the payment of it, by applying to the court, have the instrument cancelled." The same statute also enacts that every contract for the purchase of an annuity, made with a minor, shall be void, and shall remain so, even though the minor, on coming of age, should attempt to confirm it. The provisions of this act are intended to be confined to cases where the annuity is granted in consideration of a loan.

Annuities may be, and very frequently are, created by will, and such a bequest is considered in law as a general legacy; and, in case of a deficiency in the estate of the testator, it will abate proportionably with the other legacies. The payment of an annuity may be charged either upon some particular fund (in which case if the fund fails the annuity ceases) or upon the whole personal estate of the grantor; which is usually effected by a deed of covenant, a bond, or a warrant of attorney. If the person charged with the payment of an annuity becomes bankrupt, the annuity may be proved as a debt before the commissioners, and its value ascertained, according to the provisions of the bankrupt act (6 Geo. IV. c. 16, § 54). The value thus ascertained becomes a debt charged upon the estate of the bankrupt; and hereby both the bankrupt and his surety are discharged from all subsequent payments.

If the person on whose life an annuity is granted dies between two days of payment, the grantee has no claim whatever in respect of the time elapsed since the last day of payment: from this rule, however, are excepted such annuities as are granted for the maintenance of the grantee; and the parties may in all cases, if they choose it, by an express agreement, provide that the grantee shall have a rateable portion of the annuity for the time between the last payment and the death of the person on whose life it is granted. On government annuities a quarter's annuity is paid to the executors of an annuitant, if they come in and prove the death. (Comyns, *Digest*, tit. "Annuity;" Lumley, *On Annuities*.)

ANNUITY, a term derived from the

Latin, *annus*, a year; signifying, in its most general sense, any fixed sum of money which is payable either yearly or in given portions at stated periods of the year. Thus, the lease of a house, which lets for 50*l.* a year, and which has 17 years to run, is to the owner an annuity of 50*l.* for 17 years. In an ordinary use of the term, it signifies a sum of money payable to an individual yearly, during life. In the former case, it is called, in technical language, an *annuity certain;* and in the latter, a *life annuity.*

It is evident that every beneficial interest, which is either to continue for ever, or to stop at the end of a given time, such as a freehold, a lease, a debt to be paid in yearly instalments, &c., is contained under the general head of an *annuity certain,* while every such interest which terminates with the lives of any one or more individuals, all that in law is called a *life-estate,* and all salaries, as well as what are most commonly known by the name of life annuities, fall under the latter term. Closely connected with this part of the subject are COPYHOLDS (which see), in which an estate is held during certain lives, but in which there is a power of renewing any life when it drops, that is, substituting another life in place of the former, on payment of a fine —REVERSIONS, or the interest which the next proprietor has in any estate, &c., after the death of the present—and *life-insurance,* in which the question is, what annuity must A. pay to B. during his life, in order that B may pay a given sum to A.'s executors at his death?

If money could not be improved at interest, the value of an annuity certain would simply be the yearly sum multiplied by the number of years it is to continue to be paid. Thus a lease for 3 years of a house which is worth 100*l.* a year, might either be bought by paying the rent yearly, or by paying 300*l.* at once. A life annuity, in such a case, will be worth an annuity certain, continued for the average number of years lived by individuals of the same age as the one to whom the annuity is granted. But if compound interest be supposed, which is always the case in real transactions of this kind, the landlord, in the case of the annuity certain just alluded to, must only receive such a sum, as when put out to interest, with 100*l.* subtracted every year for rent, will just be exhausted at the end of 3 years. To exemplify this, let us suppose that money can be improved at 4 per cent. In Table I., in the column headed 4 p. c. (4 per cent.), we find 2·775 opposite to 3 in the first column, by which is meant that the present value of an annuity of *one pound* to last 3 years is 2·775*l.*, or $2\frac{775}{1000}$*l.* The present value of an annuity of 100*l.* under the same circumstances is therefore 277·5*l.*, or 277*l.* 10*s.* This is the value of a lease for three years corresponding to a yearly rent of 100*l.* The landlord who receives this, and puts it out at 4 per cent., will, at the end of one year, have 288*l.* 12*s.* From this he subtracts 100*l.* for the rent which has become due, and puts out the remainder, 188*l.* 12*s.*, again at 4 per cent. At the end of a year this has increased to 196*l.* 2*s.* $10\frac{3}{4}$*d.*, from which 100*l.* is again subtracted for rent. The remainder, 96*l.* 2*s.* $10\frac{3}{4}$*d.*, again put out at interest, becomes at the end of the year 99*l.* 19*s.* 9*d.*, within three pence of the last year's rent. This little difference arises from the imperfection of the Table, which extends to three decimal places only.

TABLE I.—*Present Value of an Annuity of One Pound.*

Years.	3 p. c.	3½ p. c.	4 p. c.	5 p. c.
1	·971	·966	·962	·952
2	1·913	1·900	1·886	1·859
3	2·829	2·802	2·775	2·723
4	3·717	3·673	3·630	3·546
5	4·580	4·515	4·452	4·329
6	5·417	5·329	5·242	5·076
7	6·230	6·115	6·002	5·786
8	7·020	6·874	6·733	6·463
9	7·786	7·608	7·435	7·108
10	8·530	8·317	8·111	7·722
15	11·938	11·517	11·118	10·380
20	14·877	14·212	13·590	12·462
25	17·413	16·482	15·622	14·094
30	19·600	18·392	17·292	15·372
40	23·115	21·355	19·793	17·159
50	25·730	23·456	21·482	18·256
60	27·676	24·945	22·623	18·929
70	29·123	26·000	23·395	19·343
For ever	33·333	28·571	25·000	20·000

To find the present value of an annuity of 1*l.* per annum continued for 10 years, interest being at 5 per cent., look in the column headed 5 p. c., and there,

opposite to 10 in the first column, will be found the value 7·722*l.*, or 7*l.* 14*s.* 6½*d.* This would be commonly said to be 7·722 *years' purchase* of the annuity. For a convenient rule for reducing decimals of a pound to shillings and pence, and the converse, see the 'Penny Magazine,' No. 52. It may also be done by the following table:—

TABLES II. & III.—*For reducing Decimals of a Pound to Shillings and Pence, and the converse.*

Dec.	s.	Dec.	s.	d.	Dec.	d.
·1	2	·01	0	2¼	·001	0¼
·2	4	·02	0	5	·002	0½
·3	6	·03	0	7¼	·003	0¾
·4	8	·04	0	9¾	·004	1
·5	10	·05	1	0	·005	1¼
·6	12	·06	1	2¼	·006	1½
·7	14	·07	1	5	·007	1¾
·8	16	·08	1	7¼	·008	2
·9	18	·09	1	9¾	·009	2¼

s.	Dec.	d.	Dec.	f.	Dec.
1	·05	1	·004	¼	·001
2	·1	2	·008	½	·002
3	·15	3	·013	¾	·003
4	·2	4	·017		
5	·25	5	·021		
6	·3	6	·025		
7	·35	7	·029		
8	·4	8	·033		
9	·45	9	·037		
10	·5	10	·042		
		11	·046		

For example, what is ·665*l.* in shillings and pence?

TABLE II.				
	·6	is	£0 12	0
	·06	,,	1	2¼
	·005	,,		1¼
	·665		£0 13	3¾

Again, what is 17*s.* 10¾*d.* in decimals of a pound?

TABLE III.			
£0 10 0	is	·5	
7 0	,,	·35	
10	,,	·42	
¾		·003	
£0 17 10¾		·895	

These conversions are not made with perfect exactness, as only three decimal places are taken. The error will never be more than one farthing.

To use Table I. where the number of years is not in the table, but is intermediate between two of those in the table, such a mean must be taken between the annuities belonging to the nearest years above and below the given year, as the given year is between those two years. This will give the result with sufficient nearness. We must observe, that no tables which we have room to give are sufficient for more than a first guess, so to speak, at the value required, such as may enable any one who is master of common arithmetic, not to form a decisive opinion on the case before him, but to judge whether it is worth his while to make a more exact inquiry, either by taking professional advice or consulting larger tables. As an example of the case mentioned, suppose we ask for the value of an annuity of 1*l.*, continued for 12 years, interest being at 4 per cent. We find in Table I., column 4 per cent.

For	10	years	8·111
,,	15	,,	11·118
	Difference		3·007

Since 5 years adds 3·007 to the value of the annuity, every year will add about one-fifth part of this, or ·601, and 2 years will add about 1·202. This, added to 8·111, gives 9·313. The real value is more near to 9·385, and the error of our table is ·07 out of 9·313, or about the 133rd part of the whole. The higher we go in the table, the less proportion of the whole will this error be.

The last line in Table I. gives the value of the annuity of 1*l.* continued for ever: for example, at 5 per cent., the value of 1*l.* for ever, or, as it is called, a *perpetuity* of 1*l.*, is 20*l.* This is the sum which at 5 per cent. yields 1*l.* a-year in interest only, without diminution of the principal. We see that an annuity for a long term of years differs very little in present value from the same continued for ever: for example, 1*l.* continued for 70 years at 4 per cent. is worth 23·395*l.*, while the perpetuity at the same rate is worth only 25*l.* Hence the present value of an annuity which is not to begin to be paid till 70 years have elapsed, but is afterwards to be continued for ever, is 1·605 at 4 per cent.: which sum improved during the 70 years, would yield the 25*l.* necessary to pay the annuity for all years succeeding.

TABLE IV.—*Amount of an Annuity of One Pound.*

Years.	3 p. c.	3½ p. c.	4 p. c.	5 p. c.
1	1·000	1·000	1·000	1·000
2	2·030	2·035	2·040	2·050
3	3·091	3·106	3·122	3·153
4	4·184	4·215	4·246	4·310
5	5·309	5·362	5·416	5·526
6	6·468	6·550	6·633	6·802
7	7·662	7·779	7 898	8·142
8	8·892	9·052	9·214	9·549
9	10·159	10·368	10·583	11·027
10	11·464	11·731	12·006	12·578
15	18·599	19·296	20·024	21·579
20	26·870	28·280	29·778	33·066
25	36·459	38·950	41·646	47·727
30	47·575	51·623	56·085	66·439
40	75·401	84·550	95·026	120·800
50	112·797	130·998	152·667	209·348
60	163·053	196·517	237·991	353 5·4
70	230·594	288·938	364·290	588·529

In this Table we see what would be possessed by the receiver of an annuity at the end of his term, if he put each year's annuity out at interest so soon as he received it. For example, an annuity of 1*l.*, in 40 years, at 5 per cent., amounts to 120·8*l.*, which includes 40*l.* received altogether at the end of the different years, and 80·8*l.* the compound interest arising from the first year's annuity, which has been 39 years at interest, the second year's annuity, which has been 38 years at interest, and so on, down to the last year's annuity, which has only just been received. When the annuity is payable half-yearly or quarterly, its present value is somewhat greater than that given in the preceding Table. For the annuitant, receiving certain portions of his annuity sooner than in the case of yearly payments, gains an additional portion of interest. Since 4 per cent. is 2 per cent. half-yearly and 1 per cent. quarterly, and since every term contains twice as many half-years as years, and four times as many quarters, it is evident that an annuity of 100*l.* a-year, payable half-yearly, at 4 per cent., for 10 years, is the same in present value as one of 50*l.* per annum, payable *yearly*, at 2 per cent., for 20 years. Again, 100*l.* a-year, payable quarterly for 10 years, money being at 4 per cent., is equivalent to an annuity of 25*l.*, payable yearly for 40 years, money being at 1 per cent.

The principles on which the calculation of life annuities depends will be more fully explained in the articles PROBABILITY and MORTALITY. Let us suppose 100 persons, all of the same age, buy a life annuity at the same office. Let us also suppose it has been found out, that of 100 persons at that age, 10 die in the first year, on the average, 10 more in the second year, and so on. If then it can be relied upon that 100 persons will die nearly in the same manner as the average of mankind, or at least that in such a number the longevity of some will be compensated by the unexpected death of others, the fair estimation of the value of a life annuity to be granted to each may be made as follows:—To make the question more distinct, let us suppose the bargain to be made on the 1st of January, 1844, so that payment of the annuities is due to the survivors on new-year's day of each year. Moreover let each year's annuity be made the subject of a separate contract. The first question is, what ought each individual to pay in order that he may receive the annuity of 1*l.*, if he survives in 1845. By the general law of mortality, we suppose that only 90 will remain to claim, who will, therefore, receive 90*l.* among them, the remaining 10 having died in the interval. It is sufficient, therefore, to meet the claims of 1845, that the whole 100 pay among them, January 1, 1844, such a sum as will, when put out at interest (suppose 4 per cent.) amount to 90*l.* on January 1, 1845. This sum is 86·654*l.*, and its hundredth part is ·86654*l.*, which is, therefore, what each should pay to entitle himself to receive the annuity in 1845. There will be only 80 to claim in 1846, and, therefore, the whole 100 must among them pay as much as will, put out at 4 per cent. for 2 years, amount to 80*l.* This sum is 73·968*l.*, and its hundreth part is ·73968*l.*, which is, therefore, what each must pay, in order to receive the annuity, if he lives, in 1846. The remaining years are treated in the same way, and the sum of the shares of each individual for the different years, is the present value of an annuity for his life. We must observe, that in the term *value of an annuity* it is always implied that the first annuity becomes payable at the expira-

tion of a year after the payment of the purchase-money.

The value of a life annuity depends, therefore, upon the manner in which it is presumed a large number of persons, similarly situated with the buyer, would die off successively. Various Tables of these *decrements of life*, as they are called, have been constructed, from observations made among different classes of lives. Some make the mortality greater than others; and of course, Tables which give a large mortality, give the value of the annuity smaller than those which suppose men to live longer. Those who buy annuities would, therefore, be glad to be rated according to tables of high mortality or low expectation of life; while those who sell them would prefer receiving the price indicated by tables which give a lower rate of mortality. In insurances the reverse is the case: the shorter the time which a man is supposed to live, the more must he pay the office, that the latter may at his death have accumulated wherewithal to pay his executors. We now give in Table V. the values of annuities according to three of the most celebrated Tables.

TABLE V.—*Present Value, or Purchase-money, of a Life Annuity.*

	Northampton.			Carlisle.			Gov.M.	Gov.F.
Age.	3 p.c.	4 p.c.	5 p.c.	3 p.c.	4 p.c.	5 p.c.	4 p.c.	4 p.c.
0	12·3	10·3	8·9	17·3	14·3	12·1		
5	20·5	17·2	14·8	23·7	19·6	16·6	19·3	20·0
10	20·7	17·5	15·1	23·5	19·6	16·7	18·8	19·7
15	19·7	16·8	14·6	22·6	19·0	16·2	18·0	19·1
20	18·6	16·0	14·0	21·7	18·4	15·8	17·3	18·6
25	17·8	15·4	13·6	20·7	17·6	15·3	16·9	18·1
30	16·9	14·8	13·1	19·6	16·9	14·7	16·4	17·5
35	15·9	14·0	12·5	18·4	16·0	14·1	15·7	16·9
40	14·8	13·2	11·8	17·1	15·1	13·4	14·9	16·2
45	13·7	12·3	11·1	15·9	14·1	12·6	13·8	15·3
50	12·4	11·3	10·3	14·3	12·9	11·7	12·4	14·2
55	11·2	10·2	9·4	12·4	11·3	10·3	11·0	12·8
60	9·8	9·0	8·4	10·5	9·7	8·9	9·7	11·3
65	8·3	7·8	7·3	8·9	8·3	7·8	8·2	9·6
70	6·7	6·4	6·0	7·1	6·7	6·3	6·8	7·9
75	5·2	5·0	4·7	5·5	5·2	5·0	5·4	6·3
80	3·8	3·6	3·5	4·4	4·2	4·0	3·8	4·9
85	2·6	2·5	2·5	3·2	3·1	3·0	2·3	3·8
90	1·8	1·8	1·7	2·5	2·4	2·3	1·3	2·1
95	·2	·2	·2	2·8	2·7	2·6	·6	1·0

The first of these is calculated from the Northampton Table, formed by Dr. Price, from observations of burials, &c., at Northampton. As compared with all other Tables of authority, it gives too high a mortality at all the younger and middle ages of life, and, consequently, too low a value of the annuity. The second is from the Carlisle Table, formed by Mr. Milne, from observations made at Carlisle. It gives much less mortality than most other Tables, and, therefore, gives higher values of the annuities; but it has since been proved to represent the actual state of life among the middle classes, in the century now ending, with much greater accuracy than could have been supposed, considering the local character of the observations from which it was derived. The third table is that constructed by Mr. Finlaison, from the observation of the mortality in the government tontines and among the holders of annuities granted by government in redemption of the national debt, and differs from the former two in distinguishing the lives of males from those of females. Most observations hitherto published unite in confirming the fact, that females, on the average, live longer than males, and in the annuities now granted by government, a distinction is made accordingly. The mean between the values of annuities on male and female lives, according to the Government Tables, agrees pretty nearly with the Carlisle Tables, the rate of interest being the same.

For the materials of Table V. we are indebted to the works of Dr. Price, on *Reversionary Payments;* of Mr. Milne, on *Annuities and Insurances;* and to Mr. Finlaison's *Report to the House of Commons on Life Annuities;* to all of which we refer the reader. The tables are of course very much abridged.

To use the Table V., suppose the value of an annuity of 100*l.* a-year, on a life aged 35, is required, interest being at 4 per cent., which is nearly the actual value of money. We find in the column marked 4 per cent., opposite to 35, under the Northampton Tables 14·0, under the Carlisle 16·0, and under the Government Tables 15·7 or 16·9, according as the life is male or female. These are the number of pounds which ought to buy an annuity of 1*l.*, according to these several authorities; and taking each of them 100 times, we have:—

Northampton Table . .	1400*l.*
Carlisle Table	1600*l.*
Government Table (males)	1570*l.*
Government Table (females)	1690*l.*

We cannot suppose that the annuity could be bought for less than would be required by the Carlisle Tables.

To find the value of an annuity on a life whose age lies between two of those given in the table, the process must be followed which has been already explained in treating of annuities certain.

An annuity on two joint lives is one which is payable only so long as both the persons on whose lives it is bought are alive to receive it.

TABLE VI.—*Present Value, or Purchase-money, of an Annuity of One Pound on two Joint Lives.*

Carlisle.—4 per cent.

Age.	0.	10.	20.	30.	40.	50.	60.	70.
0	8·9	12·3	11·7	10·9	9·9	8·6	6·6	4·7
5	16·8	16·5	15·6	14·4	12·9	10·5	7·8	5·0
10	17·0	16·3	15·2	13·8	12·0	9·2	6·5	4·1
15	16·3	15·5	14·3	12·9	10·5	7·9	5·1	3·0
20	15 6	14 7	13·6	11·8	9·0	6·4	4·1	2·4
25	14·8	13·8	12·5	10·3	7·8	5·0	3·0	2·6
30	13·9	12·9	11·4	8·8	6·3	4·0	2·3	1·6
40	12·1	10·9	8·6	6·2	3·9	2·3	1·6	
50	10 1	8·1	6·0	3·9	2·3	1·6		
60	6·9	5·3	3·6	2·1	1·5			
70	4·4	3·1	1·9	1·5				
80	2·4	1·6	1·3					

Northampton.—4 per cent.

Age.	0.	10.	20.	30.	40.	50.	60.	70.
1	8·3	10·8	10·1	9·4	8·6	7·5	6·1	4·4
5	13·6	13·5	12·6	11·7	10·5	8·9	7·0	4·6
10	14·3	13·4	12·6	11·5	10·1	8·3	6·0	3·5
15	13·4	12·6	11·8	10·6	9·1	7·1	4·7	2·5
20	12·5	11·9	10·9	9·6	8·0	5·8	3·4	1·7
25	11·9	11·2	10·2	8·8	6·9	4·6	2·4	0·2
30	11·3	10·5	9·3	7·8	5·7	3 4	1·7	
40	9·8	8·8	7·5	5·6	3·3	1·7		
50	8·1	7·0	5·3	3·2	1·7			
60	6·2	4·9	3·1	1·6				
70	4·1	2·8	1·5					
80	2·1	1·3						

The preceding table gives the results of the Carlisle and Northampton Tables on the value of this species of annuity, interest being at 4 per cent. The first column shows the age of the *younger* life, and the horizontal headings are *not* the age of the elder life, but the excess of the age of the elder life above that of the younger. For example, to know the value of an annuity in two joint lives, aged 25 and 55, in which the difference of age is 30 years. In the Carlisle Table *opposite* to 25, the *younger*, and under 30, the *difference*, we find 10·3; and 8·8 in the Northampton. For the value of an annuity of 100*l.*, the first tables give, therefore, 1030*l.*, and the second 880*l.*

The value of an annuity on the longest of two lives, that is, which is to be payable as long as either of the two shall be alive to receive it, is found by adding together the values of the annuity on the two lives separately considered, and subtracting the value of the annuity on the joint lives. For the above species of annuity puts the office and the parties in precisely the same situation as if an annuity were granted to each party separately, but on condition that one of the annuities should be returned to the office so long as both were alive, that is, during their joint lives. For example, let the ages be 25 and 55 as before, and let the Carlisle Table be chosen, interest being at 4 per cent., we have then:—

TABLE V.—Annuity at age 55 . .	11·3
Ditto 25 . .	17·6
Sum	28·9
TABLE VI.—Joint Annuity, 55 & 25 .	10·3
Difference . .	18·6

The value, therefore, of an annuity of 1*l.* per annum on the survivor is 18·6*l.*

The value of an annuity which is not to be payable till either one or other of two persons is dead, and which is to continue during the life of the survivor, is found as in the last case, only subtracting *twice* the value of the joint annuity, instead of that value itself. In the preceding case it is 8·3*l.* For this case only differs from the preceding, in that the annuity is not payable while both are alive, that is, during the *joint* lives. Consequently the value in this case is less than that in the last, by the value of an annuity on the joint lives.

The value of an annuity to be paid to A from and after the death of B, if the latter should happen to die first, is the value of an annuity on the life of A, diminished by the value of an annuity on the joint lives of A and B. For the situation is exactly the same as if the

office granted an annuity to A, to be returned as long as both should live. The ages and Table being as before, and the life on whose survivorship the annuity depends being that aged 25, we have:—

TABLE V.—Annuity at age 25 . .	17·6
TABLE VI.—Joint annuity, 25 & 55 .	10·3
Difference . .	7·3

whence the value of the required annuity of 1*l.* is 7·3*l.*

The following Table, extracted with abridgment from Morgan on *Insurances*, deduced from the Northampton Table, with interest at 4 per cent., gives the average sum to which the savings of an individual may be expected to amount at the end of his life, improved at compound interest from the time he begins to lay by:—

TABLE VII.—*Probable Amount of One Pound laid by yearly, and improved to the end of Life.*

Age.	Amt.	Age.	Amt.	Age.	Amt.	Age.	Amt.
0	137·8	25	79·2	50	29·5	75	7·2
5	159·1	30	66·0	55	23·6	80	4·8
10	137·9	35	54·6	60	18·5	85	3·2
15	114·1	40	44·9	65	14·1	90	2·0
20	94·5	45	36·6	70	10·3		

That is to say, according to the Northampton Tables, if a person were, at the age of 26 (that is, a year after 25), to begin laying by 100*l.* a year at interest, he might expect the amount at the end of his life to be 79·2*l.* for each pound laid by yearly; or 7920*l.* Or, to speak more strictly, if 100 persons were to do this, they might expect that the average amount of their savings, reckoning the accumulations at their deaths, would be 7920*l.* each. As we have already observed, the mortality of the Northampton Table is greater than the fact, and the average accumulations would be greater, from young ages considerably greater, than those shown in the preceding table.

We have seen that the security of the method for estimating the value of life annuities depends upon the presumption that the average mortality of the buyers is known. This average cannot be expected to hold good, unless a large number of lives be taken. Therefore, the granting of a single annuity, or of a few annuities, as a commercial speculation, would deserve no other name than gambling, even though the price demanded should be as high as that given in any tables whatsoever.

In the preceding tables, we would again remark, that our object has been simply to furnish the means of giving a moderately near determination of a few of the most simple cases. We should strongly recommend every one not to venture on important transactions without professional or other advice on which he can depend, unless he himself fully understands the principles on which tables are constructed. The liability to error, even in using the most simple table, is very great, without considerable knowledge of the subject; and most cases which arise in practice contain some circumstances peculiar to themselves, which have not and could not have been provided for in the general rules.

The following references to works on this subject may be found useful:—

ANNUITIES CERTAIN. 1. Smart's *Tables of Interest, &c.*, London, 1726. There is an edition published in 1780, which is said to be very incorrect. The values for the intermediate half-years given in this work are not correctly the values of the annuities on the supposition of half-yearly payments; in other respects it is to be depended upon. 2. Corbaux, *Doctrine of Compound Interest, &c.*, London, 1825. 3. Baily, *Doctrine of Interest and Annuities*, London, 1808. Smart's Tables are republished in this work from the correct edition. Works on *life-annuities* generally contain principles and tables for the calculation of annuities certain.

LIFE ANNUITIES. 1. Price, *Observations on Reversionary Payments, &c.* edited by W. Morgan, London, 1812. (Seventh Edition.) 2. Baily, *on Life Annuities and Assurances*, London, 1810. 3. Milne, *On the Valuation of Annuities and Assurances, &c.*, London, 1815. 4. Morgan, *on the Principles of Assurance, Annuities, &c.*, London, 1821. 5. Davies' *Tables of Life Contingencies*, London, 1825. 6. Finlaison, *On the Evidence and Elementary Facts on which Tables of Life Annuities are Founded.* Printed by the

House of Commons, 31st March, 1829. 7. Gompertz, *Estimation of the value of Life Contingencies*, in *Philosophical Transactions*, 1820.

ANNUITY, SCOTCH. The 53 Geo. III. c. 131, does not extend to Scotland. In that part of the country a fixed sum per annum paid periodically, though secured on heritable property, is called an annuity. Such an annuity is generally secured for life, and it may either be created by reservation in a transfer of the absolute property of the lands, thus constituting a burden on the new proprietor's title, or it may be granted by the absolute proprietor, the annuitant making his title real, as in the case of an absolute estate in land, by an "infeftment." Provisions to widows and children may be thus secured. This species of security on land is to be distinguished from an annual-rent right, which has a reference to a capital sum, and was generally the form in which the payment of the interest of money lent on heritable security was made a real burden on the lands before the more effective security was devised of making a redeemable disposition of the lands themselves to the creditor. The annual-rent right had its origin in the laws against usury. The taking of interest on a sum borrowed was illegal, but an irredeemable annuity was not affected by the law; and thus the lender was invested with a perpetual estate in the land. The form used for this purpose was afterwards, as above stated, brought in to aid of the heritable bond, but it is now seldom employed. When the obligor of an annuity became bankrupt, there was until lately no statutory provision in Scotland for ranking the annuity creditor, *i. e.* for enabling him to prove. The Court of Session was in use to interpose equitably to allow the annuitant to draw a dividend on the value of the annuity. By 2 & 3 Vict. c. 41, §§ 40 and 41, provisions similar to those of the 6 Geo. IV. c. 16, §§ 54 and 55, relative to the claims of annuitants against the bankrupt estate of the principal debtor, and against sureties, were applied to Scotland.

ANNUS DELIBERANDI, in the law of Scotland, is the term of a year immediately following the time of the death of the proprietor of heritable property, allowed to the heir that he may make up his mind whether he will accept the succession with the burden of his predecessor's debts. Within that time he cannot be compelled to adopt an alternative unless he has expressly or virtually resigned the privilege. The practice is adopted from the title of the Pandects, 'De jure deliberandi,' xxviii. tit. 8. The term of a year was fixed by a constitution of Justinian, *Cod.* vi. tit. 30, § 19.

ANTI-LEAGUE. [LEAGUE.]

APANAGE (*Apanagium*, *Apanamentum*), the provision of lands or feudal superiorities assigned by the kings of France for the maintenance of their younger sons.

Some of the proposed etymologies of the word apanage are mentioned by Richelet, *Dictionnaire de la Langue Françoise*.

The prince to whom the portion was assigned was called *apanagiste*, or *apanager*; and he was regarded by the ancient law of that country as the proprietor of all the seigniories dependent on the apanage, to whom the fealty (*foi*) of all subordinate feudatories within the domain was due, as to the lord of the "dominant fief."

Under the first two races of French kings, the children of the deceased king usually made partition of the kingdom among them; but the inconvenience of such a practice occasioned a different arrangement to be adopted under the dynasty of the Capets, and the crown descended entire to the eldest son, with no other dismemberment than the severance of certain portions of the dominions for the maintenance of the younger branches of the family. Towards the close of the thirteenth century the rights of the apanagiste were still further circumscribed; and at length it became an established rule, which greatly tended to consolidate the royal authority in that kingdom, that, upon the failure of lineal heirs male, the apanage should revert to the crown.

The time at which this species of provision was first introduced into France, the source from which it was borrowed,

and the origin of the term, are matters on which French writers are not agreed. (Pasquier's *Recherches*, lib. ii. cap. 18.; lib. viii. cap. 20; Calvini, *Lex Jurid.* "Appanagium;" Ducange, *Gloss.* "Apanamentum;" Pothier's *Traité des Fiefs;* and Henault's *Hist. de France, Anno* 1283.)

"It is evident," says Mr. Hallam, "that this usage, as it produced a new class of powerful feudatories, was hostile to the interests and policy of the sovereign, and retarded the subjugation of the ancient aristocracy. But an usage coeval with the monarchy was not to be abrogated, and the scarcity of money rendered it impossible to provide for the younger branches of the royal family by any other means." . . "By means of their apanages and through the operation of the Salic law, which made their inheritance of the crown a less remote contingency, the princes of the blood-royal in France were at all times (for the remark is applicable long after Louis XI.) a distinct and formidable class of men, whose influence was always disadvantageous to the reigning monarch, and, in general, to the people." (*Middle Ages*, vol. i. p. 121, 2nd edit.)

By a law of 22nd November, 1790, it was enacted, that in future no apanage *real* should be granted by the crown, but that the younger branches of the royal family of France should be educated and provided for out of the civil list until they married or attained the age of twenty-five years: and that then a certain income called *rentes apanagères* was to be granted to them, the amount of which was to be ascertained by the legislature for the time being.

By a law of March 2, 1832, which regulates the civil list of the present king of the French, it is provided, that in case of the insufficiency of the private domain of the crown, the dotations of the younger sons of the king and of the princesses his daughters shall be subsequently arranged by special laws. Before this law, the head of the house of Orleans was in possession of all that remained of the ancient apanage of his house, in virtue of art. 4 of the law of 15th January, 1825, according to which the property restored to the branch of Orleans in execution of several royal ordinances of 1814, would continue to be possessed by the chief of the Orleans branch until extinction of male issue, when the property would return to the state. The conditions attached, according to the old law, to precedents, and the law of 1825, to the possession of the Orleans apanage, were as follows:—1. The prince apanagist owed an allowance to his sons and brothers, and a portion to his daughters and sister. 2. If the prince came to the throne, his apanage was united to the crown domain, from which it was not distinct before 1791. 3. This opened to the princes whom it deprived of their claims on the apanage, a similar claim for themselves and their descendants on the domain of the crown. The law of 15th Jan. 1825, formally maintained these conditions and rights. At the revolution of 1830 the apanage of Orleans was united to the crown, which gave the younger princes a claim for compensation from the country, recognised by the 21st art. of the law of March 2, 1832. This claim, according to the terms of the article, is only admissible when the private domain of the crown is insufficient, and the right is co-existent only with the insufficiency. (*Moniteur Universel*, 30th June, 1844.) No allowance from the state has yet been made to the family of the present King of the French.

The system of Apanages was mainly formed in Germany by the high nobility. An apanage is there defined to be a provision for the proper maintenance of the younger members of a reigning house upon the establishment of the law of primogeniture, and out of the property which is subjected to this law of descent. In the middle ages, the German princes and nobles contrived to make those powers hereditary and a kind of private property, which were originally only offices granted to them by the emperor; and it followed as a natural consequence of this change, that they applied the same principles to the lands which were subject to their jurisdiction. They began to divide these lands according to their pleasure, and they soon became reduced to such small portions as to be insufficient for the maintenance of the dignity of those to whose

several shares they fell. In course of time it became the policy of the members of a princely or noble family to prevent such further division, and the consequent weakening of their power. In some cases contracts were made among several reigning princes, by which their territories were immediately formed into one body, or by which it was provided that, after the death of one reigning prince, the succession should be continued undivided in the person of some other. In other cases, a father, with the consent of his sons, made an arrangement by which the succession to the property should be undivided. By compact also and testamentary provision against the alienation of such property, the quality of Fideicommissum was given to it. But to get rid of all the evils of divided succession, it was necessary that the administration also of the principality should belong exclusively to one person. It was an old fashion to provide for the daughters by a pension or payment in money, and the custom now increased of providing the younger sons also with such a pension, or with some portion of the family lands, without giving them a full independent sovereignty; and a fixed order of succession was established, by testament or other mode, with the approbation of the emperor. Thus the law of primogeniture was established as the principle which determined the order of succession in the principalities of Germany, and at the same time the younger male members were provided for in the manner stated above. The provision for the younger members was called "deputat" and by various other names till the seventeenth century, when the French expression "apanage" was introduced into use. The word "paragium" also, which in France signified a smaller part of the feud that had been appropriated to a younger son, was used and applied to those cases where the income of a portion of the territory was made Deputat. The allowance which younger sons and their descendants have thus the right to claim from the ruling prince or possessor of the family Fideicommissum is generally fixed more precisely by family arrangements. A father who possesses an apanage, as a general rule transmits his apanage to his legitimate offspring by an equal marriage (not a marriage of disparagement), and in case there is no such offspring, the apanage reverts to the reigning prince. There are also cases, though much more rare, in which an individual received an apanage on the condition that it reverted on his death.

The name Apanage is now also given to the allowance assigned to the princes of a reigning house for their proper maintenance out of the public chest. Such apanages are introduced in those cases where a civil list is established, and the property originally intended for the support of the members of the reigning family has either been converted wholly or partly into public property, or is administered as public property; and these apanages are substituted for the claims of the younger members of such families as apaganistes on him who holds the family Fideicommissum. The transference of such claims to the public chest is accordingly founded on a right of which the persons entitled to it cannot be justly deprived without their consent. This right would be infringed if the claims to an apanage should lose the nature of a legal right, and should be transferred to the civil list in such a form that the payment of the allowance should depend on the pleasure of the head of the state for the time. But when there has been no change of fideicommissal property belonging to the reigning family into state property, the mere possession of political power by a particular family gives no right to those members of the reigning family who have no share in the government to claim an independent allowance from the income of the state; for the old confusion between the relations of a reigning family to the state and the private relations of the same family, by virtue of which confusion the state was considered the patrimonial property of a family, is altogether unknown at the present day. In states where there has been no change of family property into state property, the reigning prince may be properly enough left to provide for all the members of his family out of the means supplied him by the civil list. There may

however be political reasons for making certain allowances to the members of the reigning family, independent of the civil list that is granted to the ruling prince. But as in modern times neither the honour of a nation nor the dignity of the members of a reigning family depends in any degree on the amount of the expenditure which such members make out of the public treasury, so there are no reasons whatever for making them any independent allowance, except reasons of general interest. Accordingly in what are commonly called constitutional monarchies, where the princes of the royal family are called to any active participation in the offices of state, the allowance of a suitable income out of the public treasury may serve to give them a more independent position with respect to the head of the state. Such an allowance may also serve in the case of princes who stand in the line of succession, to give to those who may be the future heads of the state the respect due to their station, and to secure them a suitable and certain income, and thus to draw more closely the ties which unite them and the people. (Rotteck and Welcker, *Staats-Lexicon*, art. by P. A. Pfizer.) [CIVIL LIST.]

APOTHECARIES, COMPANY OF, one of the incorporated Companies of the city of London.

The word Apothecary is from the French *apoticaire*, which is defined by Richelet to be "one who prepares medicines according to a physician's prescription." The word is from the low Latin Apothecarius, and that is from the genuine Latin *apotheca*, which means a storehouse or store-room generally, and, more particularly, a place for storing wine in: the Latin word is, however, from the Greek (ἀποθήκη).

In England, in former times, an apothecary appears to have been the common name for a general practitioner of medicine, a part of whose business it was, probably in all cases, to keep a shop for the sale of medicines. In 1345 a person of the name of Coursus de Gangeland, on whom Edward III. then settled a pension of sixpence a day for life, for his attendance on his Majesty some time before while he lay sick in Scotland, is called in the grant, printed in Rymer's 'Fœdera,' an apothecary of London. But at this date, and for a long time after, the profession of physic was entirely unregulated.

It was not till after the accession of Henry VIII. that the different branches of the profession came to be distinguished, and that each had its province and particular privileges assigned to it by law.

In 1511 an act of parliament (3 Hen. VIII. c. 11) was passed, by which, in consideration, as it is stated, of "the great inconvenience which did ensue by ignorant persons practising physic or surgery, to the grievous hurt, damage, and destruction of many of the king's liege people," it was ordered that no one should practise as surgeon or physician in the city of London, or within seven miles of it, until he had been first examined, approved, and admitted by the Bishop of London or the Dean of St. Paul's, who were to call in to assist them in the examination "four doctors of physic, and of surgery other expert persons in that faculty." In 1518 the physicians were for the first time incorporated, and their college founded, evidently with the view that it should exercise a general superintendence over all the branches of the profession. In 1540 the surgeons were also incorporated and united, as they continued to be till the beginning of the present century, with the barbers.

The two associations thus established appear, however, to have very soon begun to overstep their authority. It was found necessary, in 1543, to pass an act for the toleration and protection of the numerous irregular practitioners, who did not belong to either body, but who probably formed the ordinary professors of healing throughout the kingdom. In this curious statute (34 & 35 Hen. VIII. c. 8) the former act of 1511 is declared to have been passed, "amongst other things, for the avoiding of sorceries, witchcraft, and other inconveniencies;" and not a little censure is directed against the licensed and associated surgeons for the mercenary spirit in which they are alleged to have acted; while much praise is bestowed upon the unincorporated practitioners for

their charity in giving the poor the benefit of their skill and care, and for the great public usefulness of their labours generally. The import of the enactment is expressed in its title, which is, "An Act that persons being no common surgeons may minister outward medicines." The persons thus tolerated in the administration of outward medicines, of course comprehended those who kept shops for the sale of drugs, to whom the name of apothecaries was now exclusively applied. The acceptation of the name, as thus confined, may be gathered from Shakspere's delineation of the apothecary in 'Romeo and Juliet' (published in 1597), as one whose business was "culling of simples," who kept a "shop," the "shelves" of which were filled with "green earthen pots," &c., and who was resorted to as a dealer in all sorts of chemical preparations. Nothing is said of his practising medicine; and it certainly was not till nearly a century later that apothecaries in England, as distinguished from physicians and surgeons, began regularly to act as general practitioners.

Meanwhile, however, the apothecaries of London were incorporated by James I. on the 9th of April, 1606, and united with the Company of Grocers. They remained thus united till the 6th of December, 1617, when they received a new charter, by which they were formed into a separate company, under the designation of the "Master, Wardens, and Society of the Art and Mystery of Apothecaries of the city of London." This charter ordains that no grocer shall keep an apothecary's shop; that every apothecary shall have served an apprenticeship of seven years; and before he is permitted to keep a shop, or to act as an apothecary, he shall be examined before the master and wardens to ascertain his fitness. It also gave the Company extensive powers to search for and destroy in the city of London, or within seven miles, compounds and drugs which were adulterated or unfit for medical use. This is the charter which still constitutes them one of the city companies, although various subsequent acts of parliament have materially changed the character of the society.

It appears to have been only a few years before the close of the seventeenth century that the apothecaries, at least in London and its neighbourhood, began gradually to prescribe, as well as to dispense medicines. This encroachment was strongly resisted by the College of Physicians, who, by way of retaliation, established a dispensary for the sale of medicines to the poor at prime cost at their hall in Warwick Lane. A paper controversy rose out of this measure; but the numerous tracts which were issued on both sides are now all forgotten, with the exception of Garth's burlesque epic poem, entitled 'The Dispensary,' first published in 1697. The apothecaries, however, may be considered as having made good the position they had taken, although for a considerable time their pretensions continued to be looked upon as of a somewhat equivocal character. Addison, in the 'Spectator,' No. 195, published in 1711, speaks of the apothecaries as the common medical attendants of the sick, and as performing the functions both of physician and surgeon. After mentioning blistering, cupping, bleeding, and the inward applications employed as expedients to make luxury consistent with health, he says, "The apothecary is perpetually employed in countermining the cook and the vintner." On the other hand, Pope, in his 'Essay on Criticism,' published the same year, has the following lines in illustration of the domination which he asserts to have been usurped by the critic over the poet:—

> "So modern 'pothecaries, taught the art
> By doctors' bills to play the doctor's part,
> Bold in the practice of mistaken rules,
> Prescribe, apply, and call their masters fools."

Nor, indeed, did the apothecaries themselves contend at this time for permission to practise as medical advisers and attendants any further than circumstances seemed to render it indispensable. In a clever tract written in their defence, published in 1724, and apparently the production of one of themselves, entitled 'Pharmacopolæ Justificati; or, the Apothecaries vindicated from the Imputation of Ignorance, wherein is shown that an Academical Education is nowise necessary to qualify a Man for the practice of

Physic,' we find the following opinion expressed (p. 31):—"As to apothecaries practising, the miserable state of the sick poor, till some other provision is made for their relief, seems sufficiently to warrant it, so long as it is confined to them." We may here observe, that the custom of persons being licensed by the bishops to practise medicine within their dioceses continued to subsist at least to about the middle of the last century. It is exclaimed against as a great abuse in a tract entitled 'An Address to the College of Physicians,' published in 1747.

It has been often stated that the dealers in medicines called chemists or druggists first made their appearance about the end of the last century. As they soon began to prescribe, as well as to dispense, the rivalry with which they were thus met was as eagerly opposed by the regular apothecaries as their own encroachments had in the first instance been by the physicians. In certain resolutions passed by a meeting of members of the Associated Apothecaries, on the 20th of November, 1812, among other causes which are asserted to have of late years contributed to degrade the profession, is mentioned the intrusion of pretenders of every description:—"Even druggists," it is said, "and their hired assistants, visit and administer to the sick; their shops are accommodated with what are denominated private surgeries; and, as an additional proof of their presumption, instances are recorded of their giving evidence on questions of forensic medicine of the highest and most serious import!" But in all this the druggists did no more than the apothecaries themselves had begun to do a hundred years before. We doubt, too, if the first appearance of these interlopers was so recent as has been assumed. In a tract, printed on a single folio leaf "at the Star in Bow Lane in 1683," entitled 'A Plea for the Chemists or Non-Collegiats,' the author, Nat Merry, stoutly defends the right of himself and the other manufacturers of chemical preparations to administer medicines, against the objections of the members of the Apothecaries' Company, who seem to have been themselves at this time only beginning to act as general practitioners. And in 1708 we find a series of resolutions published by the Court of Apothecaries, in which they complain of the intrusion into their business of foreigners—that is, of persons not free of the company. Their charter, though it appeared to bestow upon them somewhat extensive privileges, had been found nearly inoperative from the omission of any means of executing its provisions, and of any penalties for their infringement. In 1722, therefore, an act of parliament was obtained by the company, giving them the right of visiting all shops in which medicinal preparations were sold in London, or within seven miles of it, and of destroying such drugs as they might find unfit for use. This act expired in 1729; and although an attempt was made to obtain a renewal of it, the application was not persevered in. But in 1748 another act was passed, empowering the society to appoint ten of their members to form a court of examiners, without whose licence no one should be allowed to sell medicines in London, or within seven miles of it. It was stated before a Committee of the House of Commons, that there were at this time about 700 persons who kept apothecaries' shops in London, not one-half of whom were free of the company. This act probably had the effect of putting the unlicensed dealers down; which may account for the common statement that no such description of dealers ever made their appearance till a comparatively recent period. In an Introductory Essay prefixed to the first volume of the 'Transactions of the Associated Apothecaries and Surgeon Apothecaries of England and Wales' (8vo. London, 1823), in which it is admitted that anciently "the apothecary held the same situation which appertains, or ought to appertain, to the present druggist, who arose," it is affirmed, "about thirty years ago," the following remark is added:—"For some time previous to that period, indeed, certain apothecaries existed who purely kept shop, without prescribing for diseases; but very few of these existed even in London; for in the memory of a physician lately dead, there were not more, as he stated, than about half a dozen persons

in London who kept what could be called a druggist's shop."

Up to within the last few years the Company of Apothecaries had never attempted to extend their authority beyond the metropolis and its immediate neighbourhood. But in 1815 an act was passed (55 Geo. III. c. 194) which placed the society in a new position, by giving to a Court of Examiners, composed of twelve members, who must be apothecaries, the sole right of examining and licensing apothecaries throughout England and Wales. The examiners must be apothecaries who have been in practice for not less than ten years. They are appointed by the master, wardens, and assistants of the company. The master and wardens, or the Court of Examiners, may appoint five apothecaries in any county in England above thirty miles from London, who are empowered to examine and license apothecaries' assistants. The power of searching for adulterated drugs given by the charter was repealed by the above act, and in lieu thereof the master, wardens, or assistants, or the examiners, or any two of them, are empowered to enter the shops of apothecaries in any part of England and Wales, and to search, survey, and prove medicines, and to destroy the same; and also to impose fines on the offenders, of 5*l.*, 10*l.*, and 15*l.* for the first, second, and third offences, half of which goes to the informers and half to the Company. From twelve to twenty members are employed annually, in parties of two each, in suitable divisions, to conduct the searches. They sometimes destroy drugs and medicines in pursuance of their powers; but it is more usual to direct the clerk to send letters to each defaulter, directing them to supply themselves with drugs of good quality. The pecuniary advantages which the company derive from this act are not large enough to allow them to carry on the searches on a very extensive scale. The act also empowers the Society of Apothecaries to prosecute persons who unlawfully exercise the functions of an apothecary. It is a subject of complaint with the Society that the machinery for accomplishing this object is very imperfect. The punishment for the offence is a penalty recoverable only by action of debt, which must be tried at the assizes for the county in which the offence is committed. As it is of importance that prosecutions instituted by a public body should not fail, the Society are not in the habit of instituting frequent prosecutions. In only one case have they failed. The expenses of prosecutions are very great, six recent actions having cost 320*l.* each. (*Statement, &c.*, May, 1844.) From the small number of prosecutions, owing to the want of a more summary process, it is stated that "the number of unqualified persons who are engaged in practice is very considerable." The act of 1815 provided that, after the 1st of August in that year, no person not licensed should practise as an apothecary, except such only as were already in practice. It is required by the act that candidates for examination should have attained the age of twenty-one, and have served an apprenticeship of at least five years with an apothecary legally qualified to practice; and they are also required to produce testimonials of good moral conduct, and of a sufficient medical education.

The history of the steps taken to procure this act is very minutely detailed in the Essay prefixed to the 'Transactions of the Associated Apothecaries and Surgeons,' already referred to. They did not seek for such extensive powers as the act of 1815 subsequently gave; for in a report dated 5th December, 1812, the committee of management express themselves as of opinion "that the manage- of the sick should be as much as possible under the superintendence of the physician." The examining body proposed by the associated apothecaries was to consist of members of the three branches of the profession; but the Colleges of Physicians and Surgeons, and the Apothecaries' Company themselves, having joined in opposing the bill, it was withdrawn after its first reading. The next bill was promoted by the Apothecaries' Company, on the College of Physicians intimating that they would not oppose a measure for the regulation of the practice of apothecaries, by which the Society of Apothecaries should be appointed the examining body. This bill received the royal assent. Du-

ring its progress, the opposition of the chemists and druggists rendered it necessary to introduce a clause which exempted that class of dealers altogether from its operation.

From the circumstance that in country places, with very few exceptions, no person can practise medicine without keeping a supply of drugs for the use of his patients, or in other words, acting as an apothecary, this statute has given to the Society of Apothecaries control over the medical profession throughout England. Every general practitioner must not only have obtained his certificate, but must have served an apprenticeship of five years with a licentiate of the Company. The payment required by the Act of Parliament for a licence to practise in London, or within ten miles of it, is ten guineas; in any other part of the country, six guineas; and the licence to practise as an assistant is two guineas. The penalty for practising without this licence is twenty pounds. It is declared in the act that the society may appropriate the moneys which they thus receive in any way they may deem expedient.

It appears that from the 1st August, 1815, when the new act came into operation, to the 31st January, 1844, 10,033 practitioners have been licensed by the Court of Examiners. Dividing the twenty-seven years from August, 1816, to August, 1843, into three periods of nine years each, the annual average number of persons examined, rejected, and passed, is as follows:—

	Examined.	Rejected.	Passed.
1816-25	308·6	20·0	288·6
1825-34	453·1	68·3	384·7
1834-43	485·8	70·2	408·8

That the examination is not a mere matter of form is shown by the number of pupils rejected, which in the first period of nine years was 1 in about 15; in the second, above 1 in 6·6; and in the nine years ending August, 1843, one in 6·2. The rejected candidates no doubt frequently obtain their diplomas at a subsequent examination, after preparing themselves better; but the fact of so many being rejected is creditable to the Court of Examiners. No fees are paid by the rejected candidates.

From a return printed by order of the House of Commons in 1834, it appears that from the 29th March, 1825, to the 19th June, 1833, the money received by the company for certificates was 22,822*l.* 16*s.* Of this, in the course of the eight years, 10,218*l.* 12*s.* had been paid to the members of the Court of Examiners, besides 980*l.* to their secretary.

Before the act of 1815 came into operation, a large proportion of the medical practitioners in country places in England were graduates of the Universities of Edinburgh, Glasgow, and Dublin, or licentiates of the Royal Colleges of Surgeons of these cities, or of that of London; but the state of medical education generally was at that period very defective. The London College of Surgeons required no medical examination whatever, and twelve months only of surgical study. Persons thus qualified are admitted as surgeons in the army and navy, and into the service of the East India Company, after an additional examination by their respective boards; but they are not allowed to act as apothecaries in England.

Except in regard to experience in the compounding of medicines, it is not denied that, twelve or fourteen years ago, the course of education prescribed by the Company's Court of Examiners was very defective. In their regulations, dated August, 1832, referring to the improved system which had been recently introduced, they say, "The medical education of the apothecary was heretofore conducted in the most desultory manner; no systematic course of study was enjoined by authority or established by usage; some subjects were attended to superficially, and others of great importance were neglected altogether." In fact, all the attendance upon lectures and hospital practice that was demanded might have been and often was gone through in six or at most in eight months. The court at that time admitted that still "the attendance upon lectures, but more especially upon the hospital practice, is often grossly eluded or neglected." The case is now greatly altered. The following abstract of the principal

regulations issued by the Court of Examiners from 1815 to the present time, show that the strictness as to the attendance on and number of lectures and hospital practice has been gradually increased.

The instructions issued by the Court of Examiners, dated 31st July, 1815 (the day previous to the new act coming into operation), require evidence from candidates for the licence of the Company of having served an apprenticeship of five years, also testimonials of good moral character and of having attained the age of twenty-one years. The course of lectures prescribed were:—One course of lectures on chemistry, one on materia medica, two on anatomy and physiology, two on the theory and practice of medicine; six months' attendance on the medical practice of an hospital, infirmary, or dispensary. The examination consisted:—1. In translating parts of the 'Pharmacopœia Londinensis' and physicians' prescriptions. 2. In the theory and practice of medicine. 3. In pharmaceutical chemistry. 4. In the materia medica.

In September, 1827, the Court of Examiners prescribed an addition to the above course; an extra course of lectures on chemistry, and the introduction of botany in the course on materia medica.

In September, 1828, the Court increased the number of lectures both in chemistry, and materia medica with botany, to two courses on each subject. The period of attendance on the physician's practice at an hospital was increased to nine months, and at a dispensary to twelve months; and two new courses of lectures were instituted,—on midwifery and the diseases of women and children.

In October, 1830, the Court directed that candidates should produce a certificate of having devoted at least two years to an attendance on lectures and hospital practice; besides which they must have attended for twelve months, at least, the physician's practice at an hospital containing not less than sixty beds, and where a course of clinical lectures is given; or for fifteen months at a dispensary connected with some medical school recognised by the Court. The following changes and additions in the courses of lectures were also made:—One course was instituted on forensic medicine; one distinct course on botany; and therapeutics was included in the two courses on materia medica. Students were earnestly recommended to avail themselves of instruction in morbid anatomy.

In April, 1835, the Court of Examiners issued new regulations (which are those now in use) for raising still higher the qualifications of candidates for the licence of the Company. Every candidate whose attendance on lectures commenced on or after the 1st of October, 1835, must have attended the following lectures and medical practice during not less than three winter and two summer sessions: each winter session to consist of not less than six months, and to commence not sooner than the 1st nor later than the 15th October; and each summer session to extend from the 1st of May to the 31st of July.

First Winter Session.—Chemistry. Anatomy and physiology. Anatomical demonstrations. Materia medica and therapeutics; this course may be divided into two parts of fifty lectures each, one of which may be attended in the summer.

First Summer Session.—Botany and vegetable physiology; either before or after the first winter session.

Second Winter Session.—Anatomy and physiology. Anatomical demonstrations. Dissections. Principles and practice of medicine.

Second Summer Session.—Forensic medicine.

Third Winter Session.—Dissections. Principles and practice of medicine.

Midwifery, and the diseases of women and children, two courses, in separate sessions, and subsequent to the termina- of the first winter session. Practical midwifery, at any time after the conclusion of the first course of midwifery lectures. Medical practice during the full term of eighteen months, from or after the commencement of the second winter session; twelve months at a recognised hospital, and six months at a recognised hospital or a recognised dis-

pensary: in connection with the hospital attendance, a course of clinical lectures, and instruction in morbid anatomy, will be required.

The sessional course of instruction in each subject of study is to consist of not less than the following number of lectures:—One hundred on chemistry; one hundred on materia medica and therapeutics; one hundred on the principles and practice of medicine; sixty on midwifery, and the diseases of women and children; fifty on botany and vegetable physiology. Every examination of an hour's duration will be deemed equivalent to a lecture. The lectures required in each course must be given on separate days. The lectures on anatomy and physiology, and the anatomical demonstrations, must be in conformity with the regulations of the Royal College of Surgeons of London in every respect. Candidates must also bring testimonials of instruction in practical chemistry, and of having dissected the whole of the human body once at least.

The above course of study may be extended over a longer period than three winter and two summer sessions, provided the lectures and medical practice are attended in the prescribed order and in the required sessions. The examinations of the candidate for the certificate are as follows:—In translating portions of the first four books of Celsus 'De Medicinâ' and of the first twenty-three chapters of Gregory's 'Conspectus Medicinæ Theoreticæ;' in physicians' prescriptions, and the 'Pharmacopœia Londinensis;' in chemistry; in materia medica and therapeutics; in botany; in anatomy and physiology; in the principles and practice of medicine. This branch of the examination embraces an inquiry into the pregnant and puerperal states; and also into the diseases of children.

In the 'Statement' issued by the Society of Apothecaries in May, 1844, they say: "Had the means of instruction remained as they were in 1815, the Court of Examiners could not have ventured upon extending their regulations as they have done. In this instance, however, as in others, the demand produced the supply. The increased number of medical students attending lectures in conformity with the Regulations led to the increase of medical teachers, and not only did new schools spring up in the metropolis, but, under the auspices of the Court of Examiners, public schools of medicine were organized in the provinces: and at the present day Manchester, Liverpool, Birmingham, Leeds, Bristol, Hull, Sheffield, Newcastle, and York, have each their public school, at which the student may pursue and *complete* his medical education." It is added that "no mean proportion of those whose examination has given evidence of the highest professional attainment have been pupils of the provincial schools." The influence of the Regulations of the Court of Examiners on the medical profession is very great. The number of students who registered at Apothecaries' Hall at the commencement of the winter session of 1843-4, as having entered to lectures at the metropolitan schools alone, in conformity with these Regulations, was 1031. The opinion of very eminent members of the medical profession before a select committee of the House of Commons in 1834, as to the manner in which the Apothecaries' Company had performed the duties devolving upon them as an examining body, are very decided. Sir Henry Halford stated that "the character of that branch of the profession had been amazingly raised since they have had that authority;" Dr. Seymour, that "there is no question that the education of the general practitioner is of the very highest kind, as good as that of physicians some years ago;" Sir David Barry, that "the examination established by the Company of Apothecaries was by far the most comprehensive examination in London."

In November, 1830, the Court issued very strict rules respecting the registration of lectures and hospital or dispensary attendance.

The Apothecaries' Society, in their interpretation of the clause which requires five years' apprenticeship to an apothecary, have considered that "every candidate who has been an apprentice for the length of time directed by the act, is entitled to be examined, provided the person

to whom he was an apprentice was legally qualified to practise as an apothecary according to the laws in force in that kingdom or particular district in which he resided; and in accordance with this interpretation, hundreds of candidates have been admitted to examination who have served their apprenticeships in Scotland and Ireland, as well as many from America and the British Colonies." (*Reply*, &c. p. 3.) Of twenty-four graduates and licentiates of the Scottish colleges who presented themselves for examination before the Society of Apothecaries during the twelve months ending the 25th of April, 1833, eight candidates, or one-third of the whole number, were rejected. (*Reply*, &c.) The whole subject of medical education in these kingdoms requires a complete and impartial investigation; and that the apprentice clause in particular demands a fresh consideration, is now a pretty general opinion. The admission of graduates from Scotland and Ireland to an equal participation of practice with the English general practitioner, can only be regarded as a very partial measure of reform, if reform should be found necessary; and the interests of the public require that, if others than those licensed by the Apothecaries' Society are admitted to general practice in England, there shall at least be good proof that they are as well qualified as those who obtain the apothecaries' diploma. One plan of medical reform to which attention has been recently directed is to form what are now termed the three branches of the profession into one Faculty of Medicine, with the power of electing their own council; but it is contended that the physicians and surgeons having interests adverse to those of the apothecaries, such a plan would not be fair. It is also proposed that chemists and druggists should be duly registered after an examination respecting their fitness.

The Apothecaries' Company ranks the fifty-eighth in the list of city Companies. The freedom of the Company is acquired by patrimony, freedom, and redemption. Freedom by patrimony may be acquired by persons not apothecaries. The charter requires that all persons practising as apothecaries in the city of London should belong to the Company; but this rule is not enforced. Apprentices to apothecaries must be bound at the Company's Hall, after an examination by the Master and Wardens as to their proficiency in Latin. The members of the society are exempted by statute from serving ward and parish offices. The income of the Company is under 2000*l.* a year. Their arms are, azure, Apollo in his glory, holding in his left hand a bow, in his right an arrow, bestriding the serpent Python; supporters, two unicorns; crest, a rhinoceros, all *or*; motto, *Opiferque per orbem dicor*. They have a hall, with very extensive laboratories, warehouses, &c., in Water-lane, Blackfriars, where medicines are sold to the public; and where, since the reign of Queen Anne, all the medicines are prepared that are used in the army and navy. The freemen of the Company who are what is termed proprietors of stock, have the privilege of becoming participators in the profits arising from the sale of medicines. The concern is regulated by a committee of thirty members. The dispensary was established in 1623; and the laboratories by subscription among the members of the Company in 1671. The Company also possess a garden, to which every medical student in London is admitted, of above three acres in extent, at Chelsea, in which exotic plants are cultivated. The ground was originally devised to them, in 1673, for sixty-one years at a rent of five pounds, by Charles Cheyne, Esq., lord of the manor of Chelsea, and afterwards granted to them in perpetuity, in 1721, by his successor, Sir Hans Sloane, on condition that they should annually present to the Royal Society, at one of their public meetings, fifty specimens or samples of different sorts of plants, well-cured and of the growth of the garden, till the number should amount to two thousand. This they have long since done, and the specimens are preserved by the Royal Society. The gardens are kept up at a considerable expense out of the funds of the Company, assisted at various times by liberal contributions of the members. Connected with the garden is the office of Botanical Demonstrator, who is appointed by the Court.

He gives gratuitous lectures at the garden twice a week from May to September, to the apprentices of freemen of the Company, and to the pupils of all botanical teachers who apply for admission at the garden. The society gives every year a gold and a silver medal and books as prizes to the best-informed students in materia medica who have attended their garden. The apprentices of members of the society are not permitted to contend with other candidates for these prizes.

APPARENT HEIR, in the law of Scotland, is a person who has succeeded by hereditary descent to land or other heritable property, but who has not obtained feudal investiture. An apparent heir may act as absolute proprietor in almost every other capacity but that of removing tenants who have got possession from his predecessor.

APPARITOR, an officer employed as messenger and in other duties in ecclesiastical courts. The canons direct that letters citatory are not to be sent by those who have obtained them, nor by their messenger, but the judge shall send them by his own faithful messenger. It is the duty of the apparitor to call defendants into court, and to execute such commands as the judge may give him; and this duty shall not be performed by deputy. In 21 Hen. VIII. c. 5, as well as in the canons, apparitors are also called summoners or summers. This act was passed for the purpose of restraining the number of apparitors kept by bishops, archdeacons, or their vicars or officials, or other inferior ordinaries.

APPEAL. This word is derived immediately from the French Appel or Apel, which is from the Latin Appellatio. The word Appellatio, and the corresponding verb Appellare, had various juridical significations among the Romans. It was used to signify a person's applying to the tribunes for their protection; and also generally to signify the calling or bringing of a person into court to answer for any matter or offence. Under the Empire, Appellatio was the term used to express an application from the decision of an inferior to a superior judge on some sufficient ground. The first title of the 49th book of the Digest is on Appeals (De Appellationibus). In the French language, the word apellant signifies he who appeals, he who makes an appel from the decree or sentence of an inferior judge, and both words have the same sense in the English. Appel also signifies a challenge to single combat.

The French word Appeller is explained as signifying the act of summoning the party against whom complaint is made. There is also the phrase to "appeal from one to another," which is the English expression. The Latin word Appellare is used both to express the summoning or calling on a person against whom a complaint or demand is made, and the calling on, or applying to, the person whose protection is sought (Appius tribunos appellavit: Livy, iii. 56). In the Roman law-writers the common phrase is "appellare ad," from which is borrowed the modern expression "to appeal to;" and the appellant is said "appellare adversus, contra, aliquem or sententiam præsidis," or "appellare a, ex, de sententia," which phrases resemble those in use among us. (Facciolati, Lex. *Appello*; Richelet, *Dictionnaire de la Langue Françoise.*)

APPEAL, in the old Criminal Law of England, was a vindictive action at the suit of the party injured, in which suit the appellant, instead of merely seeking pecuniary compensation, as in civil actions, demanded the punishment of the criminal.

It differed from an indictment in some material points. Being a proceeding instituted by a private person in respect of a wrong done to himself, the prerogative of the crown did not go so far as to suspend the prosecution or to defeat it by a pardon. It seems to have been in reference to this peculiarity that the appeal is said to have been called by Chief Justice Holt "a noble birthright of the subject," inasmuch as it was the only mode by which the subject could insist upon the rigorous execution of justice without the risk of royal interposition on behalf of the offending party. Even a previous acquittal on an indictment for the same offence was no bar to the prosecution by the appellant; nor was a previous conviction a bar, where the execution of the sentence

had been prevented by a pardon. It was in the power of the appellant alone to relinquish the prosecution, either by releasing his right of appeal or by accepting a compromise.

Another remarkable feature of appeal was the mode of trial, which in cases of treason or capital felony was either by jury or by *battle*, at the election of the defendant.

Where the latter form of trial was adopted, the following was the order of proceeding:—The appellant formally charged the *appellee* with the offence: the latter denied his guilt, threw down his glove, and declared himself ready to prove his innocence by a personal combat. The challenge was accepted by the appellant, unless he had some matter to allege, in what was termed a *counterplea*, showing that the defendant was not entitled to the privilege of battle, and both parties were then put to their oaths, in which the guilt of the accused was solemnly asserted on one side and denied on the other. A day was then appointed by the court for the combat, the defendant was taken into custody, and the accuser was required to give security to appear at the time and place prefixed. On the day of battle, the parties met in the presence of the judges, armed with certain prescribed weapons, and each took a preliminary oath to the effect that he had resorted to no unfair means for securing the assistance of the devil in the approaching contest. If the defendant was vanquished, sentence was passed upon him, and he was forthwith hanged. But if he was victorious, or was able to persist in the combat till starlight, or if the appellant voluntarily yielded, and cried *craven*, then the defendant was acquitted of the charge, and the appellant was not only compelled to pay damages to the accused, but was further subjected to heavy civil penalties and disabilities.

Some of the details of this singular mode of trial, as reported by contemporary writers, are sufficiently ludicrous. Thus we are told that the combatants were allowed to be attended within the lists by *counsel*, and a *surgeon with his ointments*. In the reign of Charles I., Lord Rea, on a similar occasion, was indulged with a seat and wine for refreshment, and was further permitted to avail himself of such valuable auxiliaries as *nails, hammers, files, scissors, bodkin, needle and thread*. (Rushworth's *Collections*, cited in Barrington's *Observations*, p. 328.) We also learn from the *Close Rolls* recently published, that parties under confinement preparatory to the trial were allowed to go out of custody for the purpose of practising or taking lessons in fencing. (Mr. Hardy's *Introduction*, p. 185.) The whimsical combat between Horner and Peter, in the second part of *Henry VI.*, has made the proceedings on an appeal familiar to the readers of Shakspere; and the scene of a judicial duel upon a criminal accusation has been still more recently presented to us in the beautiful fictions of Sir Walter Scott.

It appears probable that the trial by battle was introduced into England from Normandy. The *Grand Coustumier* of that country, and the *Assizes of Jerusalem*, furnish evidence of its early existence.

The courts in which it was admitted were the King's Bench, the Court of Chivalry, and (in the earlier periods of our history) the High Court of Parliament.

In some cases the appellant was able to deprive the accused of his choice of trial, and to submit the inquiry to a jury. Thus, if the appellant was a female; or under age; or above the age of sixty; or in holy orders; or was a peer of the realm; or was expressly privileged from the trial by battle by some charter of the king; or laboured under some material personal defect, as loss of sight or limb; in all such cases he or she was allowed to state in a counterplea the ground of exemption, and to refer the charge to the ordinary tribunal. The party accused was also disqualified from insisting on his *wager of battle*, where he had been detected in the very act of committing the offence, or under circumstances which precluded all question of his guilt. Indeed (if early authorities are to be trusted) it is far from clear that a criminal, apprehended *in flagranti delicto*, did not undergo the penalties of the law forthwith, without the formality of any

trial. (Palgrave's *English Commonwealth*, vol. i. p. 210.) The law on this latter point formed the subject of discussion in the Court of King's Bench in the year 1818, in the case of Ashford *v.* Thornton. Upon that occasion the defendant had been acquitted upon a prior indictment for the murder of a female, whom he was supposed to have previously violated. The acquittal of the accused upon evidence which to many appeared sufficient to establish his guilt occasioned great dissatisfaction, and the brother and next heir of the deceased was accordingly advised to bring the matter again under the consideration of a jury by the disused process of an appeal. The defendant waged his battle in the manner above described, and the appellant replied circumstances of such strong and pregnant suspicion as (it was contended) precluded the defendant from asserting his innocence by battle. It was, however, decided by the court that an appeal, being in its origin and nature a hostile challenge, gave to the appellee a right to insist upon fighting, and that the appellant could not deprive him of that right by a mere allegation of suspicious circumstances. The case was settled by the voluntary abandonment of the prosecution. In the following year an act (59 Geo. III. c. 46) was passed to abolish all criminal appeals and trial by battle in all cases, both civil and criminal.

The cases in which, by the ancient law, appeals were permitted, were treason, capital felony, mayhem, and larceny. Indeed, the earliest records of our law contain proofs that appeals were a common mode of proceeding in many ordinary breaches of the peace, which at this day are the subject of an action of trespass. The wife could prosecute an appeal for the murder of her husband; the heir male general for the murder of his ancestor; and in any case the prosecutor might lawfully compromise the suit by accepting a pecuniary satisfaction from the accused. Hence it was that the proceeding was in fact frequently resorted to for the purpose of obtaining such compensation rather than for the ostensible object of ensuring the execution of justice on the offender. (Hawkins's *Crown Law*, book ii. chaps. 23 and 45; *Ashford* v. *Thornton*, Barnwall and Alderson's *Reports*, vol. i.; Kendal's *Argument for Construing largely*, &c.; Bigby *v.* Kennedy, Sir William Blackstone's *Reports*, vol. ii. p. 714; and the ingenious speculations and remarks of Sir F. Palgrave on the origin of trial by battle, in his work on the Commonwealth of England.)

Besides the appeal by innocent or injured parties, a similar proceeding was in certain cases instituted at the suit of an accomplice. The circumstances under which this might be done are mentioned under the article APPROVER.

APPEAL. The removal of a Civil cause from an inferior court or judge to a superior one, for the purpose of examining the validity of the judgment given by such inferior court or judge, is called an Appeal.

An appeal from the decision of a court of common law is usually prosecuted by suing out a *writ of error*, by means of which the judgment of the court below undergoes discussion, and is either affirmed or reversed in the court of error.

The term appeal, used in the above sense, is by the law of England applied in strictness chiefly to certain proceedings in Parliament, in the Privy Council and Judicial Committee of the Privy Council, in the Courts of Equity, in the Admiralty and Ecclesiastical courts, and in the Court of Quarter Sessions.

Thus an appeal lies to the House of Lords from the decrees or orders of the Court of Chancery in this country and in Ireland, and from the decisions of the supreme civil courts in Scotland.

An appeal lies to the king in council from the decrees and decisions of the colonial courts, and indeed from all judicatures within the dominions of the crown, except Great Britain and Ireland.

To the same jurisdiction are referred (in the last resort) all ecclesiastical and admiralty causes, and all matters of lunacy and idiotcy.

In 1844 an act was passed correcting an anomaly in the former state of the law under which appeals could not be brought before the Privy Council for the reversal, &c. of judgments, of any courts

in certain colonies, save only of the Courts of Error or Courts of Appeal within the same. The act provides for the admission of appeals from other courts of justice within such colonies.

A decree or order of the Master of the Rolls or the Vice-Chancellors may be revised by the Lord Chancellor upon a petition of appeal.

The number of causes or petitions heard on appeal before the Lord Chancellor from Trinity Term, 1842, to Hilary Term, 1844, both inclusive, was 133, in all of which, with the exception of 15, judgment had been given at the end of Hilary Term, 1844.

An appeal lies directly from the Vice-Admiralty courts of the colonies, and from other inferior admiralty courts, as well as from the High Court of Admiralty, to the king in council. This latter appellate jurisdiction was regulated by statutes 2 & 3 Will. IV. c. 92, and 3 & 4 Will. IV. c. 41, by which the Court of Delegates, Commission of Review, and Commission of Appeal in Prize Causes, have been abolished.

To the judicial committee of Privy Council (3 & 4 Will. IV. c. 41) are referred all appeals from the courts of the Isle of Man and the Channel Islands, the Colonial and Indian courts, all appeals to the Queen in Council, matters relating to the rights of patentees, &c., &c. [PRIVY COUNCIL.]

The number of causes or petitions heard on appeal before her Majesty's Privy Council, from January 1, 1842, to February 20, 1844, was 92, and judgment had been delivered in all except three.

In the ecclesiastical courts, a series of appeals is provided from the Archdeacon's Court to that of the bishop, and from the bishop to the archbishop. From the archbishop the appeal of right lay to the king in council before the Reformation; yet appeals to the Pope, or appeals to Rome, as they were called, were in fact of common occurrence until the reign of Henry VIII., by whom an appeal was directed to be made to certain delegates named by himself, and appeals to Rome were abolished (24 Hen. VIII. c. 12). After that period a Court of Delegates, appointed for each cause, was the ordinary appellate tribunal, until the abolition of their jurisdiction by the act alluded to above, by which it is further provided that no Commission of Review shall hereafter issue, but that the decision of the king in council shall be final and conclusive.

Such are the principal heads of appeal, to which we may add the appellate jurisdiction of the justices of the peace assembled at the Quarter Sessions, to whom various statutes have given authority to hear upon appeal the complaints of persons alleging themselves to be aggrieved by the orders or acts of individual magistrates.

Under recent acts of parliament the right of appeal is given in a number of cases relating to ecclesiastical discipline. There is an appeal given to the clergy from the bishop to the archbishop in certain cases, which must be presented in one month after the bishop's decision. (1 & 2 Vict. c. 106.) By § 83 of the same act, it is provided that in case of difference between an incumbent and curate as to stipend, the case may be brought before the bishop and summarily determined, and the incumbent's living may be sequestered if he refuses payment according to the bishop's decision. § 111 points out the mode of making appeals under this act. Appeals on matters of ecclesiastical discipline are still further provided for by §§ 13, 15, and 16 of 3 & 4 Vict. c. 86.

In the session of 1844 (May 30) a bill was brought into the House of Commons by Mr. Kelly, to provide an Appeal in Criminal cases, and thus to give the same privileges which property enjoys, but which are denied in matters affecting life and liberty. At present, in criminal cases, the judge may, if he think proper, reserve a point for consideration. If the case be considered by the judges, the reasons for affirming the sentence, or for recommending a pardon, are not publicly delivered. In every criminal case recourse may at present be had to the Secretary of State; but as a matter of course he would refer to the judge, and unless the judge is favourable, there is very little chance that the Secretary of State would

grant relief. In the bill brought in by Mr. Kelly it is intended to assimilate criminal as much as possible to civil procedure as to appeal. It is left open to the party convicted to move in any of the superior courts for a rule to show cause why there should not be a new trial; upon which motion the court is to be at liberty to deal with the matter as in a civil case, and, on good cause shown, a new trial will take place. Application may be made by a convicted party upon points of law in arrest of judgment. The bill also allows a bill of exceptions, and an ultimate appeal to the House of Lords. To prevent the abuse of the privilege, it is proposed to invest the judge with a discretionary power, either to pass and execute the sentence, or to postpone the passing and execution of it. The measure was opposed by the government, and since the above was written it has been withdrawn.

APPRAISEMENT (from the French *aprécier*, *appriser*, or *appraiser*, and remotely from the Latin *pretium*, to set a price upon an article). When goods have been taken under a distress for rent, it is necessary, in order to enable the landlord to sell them according to the provisions of the statute 2 William and Mary, sess. i. c. 5, that they should be previously appraised or valued by two appraisers. These appraisers are sworn by the sheriff, under-sheriff, or constable, to appraise the goods truly according to the best of their understanding. After such an appraisement has been made, the landlord may proceed to sell the goods for the best price that can be procured. By the statute 48 Geo. III. c. 140, an *ad valorem* stamp duty was imposed upon appraisements.

APPRAISERS (French, *appréciateurs*) are persons employed to value property. By the statute 46 Geo. III. c. 43, it was first required that any person exercising the calling of an appraiser should annually take out a licence to act as such, stating his name and place of abode, and signed by two commissioners of stamps. By the same statute a stamp duty of 6*s*. was imposed upon such licences; and unlicensed persons were forbidden to act as appraisers under a penalty of 50*l*. The duty imposed by the General Stamp Act, 55 Geo. III. c. 104, is 10*s*. The number of licensed appraisers in London is about nine hundred, and in other parts of England and Wales there are about seventeen hundred.

APPRENTICE (from the French *apprenti*, which is from the verb *apprendre*, to learn) signifies a person who is bound by indenture to serve a master for a certain term, and receives, in return for his services, instruction in his master's profession, art, or occupation. In addition to this, the master is often bound to provide food and clothing for the apprentice, and sometimes to pay him small wages, but the master often receives a premium. In England the word was once used to denote those students of the common law in the societies of the inns of court who —not having completed their professional education by ten years' study in those societies, at which time they were qualified to leave their inns and to execute the full office of an advocate, upon being called by writ to take upon them the degree of serjeant-at-law—were yet of sufficient standing to be allowed to practise in all courts of law except the court of Common Pleas. This denomination of apprentice (in law Latin *apprenticii ad legem nobiliores*, *apprenticii ad barras*, or simply *apprenticii ad legem*) appears to have continued until the close of the sixteenth century, after which this term fell into disuse, and we find the same class of advocates designated, from their pleading without the bar, as *outer* barristers, now shortened into the well-known term barristers. (Spelman, *Gloss. ad verbum;* Blackstone, *Commentaries*, vol. i. 23; vol. iii. 27.)

The system of apprenticeship in modern Europe is said to have grown up in conjunction with the system of associating and incorporating handicraft trades in the twelfth century. The corporations, it is said, were formed for the purpose of resisting the oppression of the feudal lords, and it is obvious that the union of artisans in various bodies must have enabled them to act with more power and effect. The restraint of free competition, the maintenance of peculiar privileges, and the limitation of the numbers of such as should participate in them, were the

main results to which these institutions tended; and for these purposes a more effective instrument than apprenticeship could hardly be found. To exercise a trade, it was necessary to be free of the company or fraternity of that trade; and as the principal if not the only mode of acquiring this freedom in early times was by serving an apprenticeship to a member of the body, it became easy to limit the numbers admitted to this privilege, either indirectly by the length of apprenticeship required, or more immediately by limiting the number of apprentices to be taken by each master. So strict in some instances were these regulations, that no master was allowed to take as an apprentice any but his own son. In agriculture, apprenticeship, though in some comparatively later instances encouraged by positive laws, has never prevailed to any great extent. The tendency to association indeed is not strong among the agricultural population, combination being, to the scattered inhabitants of the country, inconvenient and often impracticable; whereas the inhabitants of towns are by their very position invited to it.

Subsequently to the twelfth century, apprenticeship has prevailed in almost every part of Europe—in France, Germany, Italy, and Spain, and probably in other countries. It is asserted by Adam Smith, that seven years seem once to have been all over Europe the usual term established for the duration of apprenticeships in most trades. There seems, however, to have been no settled rule on this subject, for there is abundant evidence to show that the custom in this respect varied not only in different countries, but in different incorporated trades in the same town.

In Italy, the Latin term for the contract of apprenticeship was *acconventatio*. From an old form of an Italian instrument, given by Beier in his learned work *De Collegiis Opificum*, it appears that the contract, which in most respects closely resembled English indentures of apprenticeship, was signed by the father or other friend of the boy who was to be bound, and not by the boy himself, who testified his consent to the agreement merely by being present.

In France, the trading associations prevailed to a great extent under the names of "Corps de Marchands" and "Communautés." Many of them had been established by the crown solely for the purpose of raising revenue by the grant of exclusive privileges and monopolies. At the latter end of the seventeenth century there were in Paris six "Corps de Marchands," and one hundred and twenty-nine "Communautés," or companies of tradesmen, each fraternity having its own rules and laws. Among these bodies the duration of apprenticeship varied from three to eight or ten years. It was an invariable rule in the "Corps de Marchands," which was generally followed in the "Communautés," that no master should have more than one apprentice at a time. There was also a regulation that no one should exercise his trade as a master until, in addition to his apprenticeship, he had served a certain number of years as a journeyman. During the latter term he was called the "compagnon" of his master, and the term itself was called his "compagnonage." He had also, before being admitted to practise his trade as master, to deliver to the "jurande," or wardens of the company, a specimen of his proficiency in his art, called his "chef d'œuvre." He was then said "aspirer à la maîtrise." The sons of merchants living in their father's house till seventeen years of age, and following his trade, were reputed to have served their apprenticeship, and became entitled to the privileges incidental to it without being actually bound. These companies or associations were abolished at the Revolution, when a perfect freedom of industry was recognised by law, and this, with a few exceptions, has continued to the present day. But though the contract of apprenticeship, so far as a fixed period goes, has ceased in France to be imperative upon the artisan, it has not fallen into disuse; a law of 22 Germinal, An XI. (12th April, 1803), prescribes the rights and duties both of master and apprentice. It does not, however, lay down any particular form, and leaves the time and other conditions of the contract to be determined by the parties.

In Germany, though we find the same

institution, it varies not only in the name, but has some other remarkable peculiarities. The companies, there called *gilden*, *zünfte*, or *innungen*, appear, both on account of moral and physical defects, to have refused admission to applicants for freedom, at the discretion of the elders or masters. They seem to have occasionally admitted workmen who had not served a regular apprenticeship into the lower class of members of a trade; but only those were allowed to become masters who had gone through the regular stages of instruction. The course, which continues to the present day, is as follows:—The apprentice, after having served the term prescribed by his indenture (*aufdings-brief*), is admitted into the company as a companion (*gesell*), which corresponds in many respects to the French *compagnon*. Having passed through the years of his apprenticeship, called *lehrjahre*, satisfactorily, he becomes entitled to receive from the masters and companions of the guild a certificate, or general letter of recommendation (*kundschaft*), which testifies that he has duly served his apprenticeship, and has been admitted a member of the company, and commends him to the good offices of the societies of the same craft, wherever he may apply for them. With this certificate the young artisan sets out on his travels, which often occupy several years, called *wandel-jahre*, supporting himself by working as a journeyman in the various towns in which he temporarily establishes himself, and availing himself of his *kundschaft* to procure admission into the fellowship and privileges of his brother-workmen of the same craft. On his return home, he is entitled, upon producing certificates of his good conduct during his *wandel-jahre*, to become a master. In Germany, the periods of servitude have varied in different states and at different periods; in general, the term is seven years; but in some instances an apprenticeship of five or three years is sufficient.

Neither in Ireland nor in Scotland have the laws relating to associated trades or apprentices been very rigorously enforced. In Ireland the same system of guilds and companies certainly existed; but, as it was the policy of the English government to encourage settlers there, little attention was paid to their exclusive privileges; and in 1672 the lord-lieutenant and council, under authority of an Act of Parliament, issued a set of rules and regulations for all the walled towns in Ireland, by which any foreigner was allowed to become free of the guilds and fraternities of tradesmen on payment of a fine of 20*s*. A statute containing very similar enactments was passed in 19 George III. The term of apprenticeship, also, in Ireland, was of a moderate length, five years being required by 2 Anne, c. 4, for the linen manufacture, which, by 10 George I. c. 2, was reduced to four years. It is asserted by Adam Smith, that there is no country in Europe in which corporation laws have been so little oppressive as in Scotland. Three years are there a common term of apprenticeship even in the nicer trades, but there is no general law on the subject, the custom being different in different communities.

It is, perhaps, impossible to ascertain precisely at what time apprenticeships first came into general use in England. But that the institution is one of very old date is certain, being probably contemporaneous with the formation of the guilds or companies of tradesmen. It appears from Herbert's 'History of the Twelve Livery Companies of London,' that in 1335, when the warder's accounts of the Goldsmiths' Company begin, there were fourteen apprentices bound to members of the company. In the statutes of the realm, however, there is no reference to such an institution for about 200 years after the guilds are known to have existed, apprentices being first incidentally noticed in an act (12 Rich. II. c. 3) passed in 1388. In 1405-6 (7 Henry IV. c. 17) a statute was passed which enacted that no one shall bind his son or daughter apprentice unless he have land or rent to the value of 20*s*. by the year; the cause of which provision is stated to be the scarcity of labourers in husbandry, in consequence of the custom of binding children apprentices to trades. In the act (8 Henry VI. c. 11) which repealed this statute in favour of the city of London, the putting and taking of apprentices are stated to have been at that time a custom

of London time out of mind. The same statute was repealed (by 11 Henry VII. c. 11) in favour of the citizens of Norwich, and (by 12 Henry VII. c. 1) in favour of the worsted-makers of Norfolk; and in the former act we find the first mention of any particular term of servitude, the custom of the worsted-shearers of Norwich being confirmed by it, which required an apprenticeship of seven years. Except in London, it does not appear that at an early period there was in England any uniform practice in this respect, but that the duration of the apprenticeship was a matter for agreement between the parties to the contract. In Madox's *Formulare Anglicanum* there is an indenture of apprenticeship dated in the reign of Henry IV., which is nearly in the same form as the modern instrument; and in that case the binding is to a carpenter for six years. It is, however, probable that before the statute of 5 Eliz. c. 4, the term of apprenticeship was seldom less than seven years. In London, the period of seven years at the least was expressly prescribed by the custom as the shortest term; and Sir Thomas Smith, in his *Commonwealth of England*, written about the time of the passing of the statute of Elizabeth, says, in reference to the previous practice, that the apprentice "serveth, some for seven or eight years, some nine or ten years, as the master and the friends of the young man shall think meet, or can agree together."

The statute of 5 & 6 Edw. VI. c. 8, which enacts that no person shall weave broad woollen-cloth, unless he has served a seven years' apprenticeship, may be adduced as a further proof that this term was fast becoming the customary one. By 5 Elizabeth, c. 4, it was declared that no person should "set up, occupy, use, or exercise any craft, mystery, or occupation, then used or occupied within the realm of England or Wales, except he should have been brought up therein seven years at the least as an apprentice." But neither by that statute nor by the customs of London and Norwich, which were excepted by the act, was a longer term of apprenticeship than seven years forbidden. The following are some of the chief provisions of the statute of Elizabeth:—Householders who have at least half a ploughland in tillage may take any one as an apprentice above the age of ten and under eighteen, until the age of twenty-one or twenty-four as the parties may agree. Householders of the age of twenty-four in cities may take apprentices in trades for seven years, who must be sons of freemen not being labourers nor engaged in husbandry. Merchants in any city or town corporate trafficking in foreign parts, mercers, drapers, goldsmiths, ironmongers, embroiderers, or clothiers, are not to take any apprentices, except their own sons, unless their parents have 40*s.* freehold a year. Persons residing in market-towns, if of the age of twenty-four, may take two apprentices, who must be children of artificers, but merchants in market-towns are not to take any apprentices other than children whose parents have 3*l.* a year freehold. In the following trades the children of persons who had no land might be taken as apprentices: smiths, wheelwrights, ploughwrights, millwrights, carpenters, rough masons, plasterers, sawyers, lime-burners, brick-makers, bricklayers, tilers, slaters, healyers, tile-makers, linen-weavers, turners, coopers, millers, earthen-potters, woollen-weavers, weaving housewife's or of household cloth only and none other, cloth-pillers, otherwise called tuckers or walkers, burners of ooze and woad ashes, thatchers, and shinglers. Woollen cloth-weavers, except in cities, towns corporate, or market-towns, are not to take as apprentices children whose parents were not possessed of 3*l.* a year freehold, but they might take their own sons as apprentices: the woollen-weavers of Cumberland, Westmoreland, Lancashire, and Wales were exempted from the operation of this clause. There was a clause in the act which gave to one justice the power of imprisoning persons (minors) who refused to become apprentices. The justices were empowered to settle disputes between masters and apprentices, and could cancel the indentures. This statute of Elizabeth was repealed in 1814 by 54 Geo. III. c. 96.

The London apprentices, in early times, were an important and often a formidable

body. They derived consequence from their numbers, the superior birth of many of them, and the wealth of their masters, but particularly from their union, and the spirit of freemasonry which prevailed among them. The author of a curious poem published in 1647, entitled *The Honour of London Apprentices*, observes, in his preface, that "from all shires and counties of the kingdom of England and dominion of Wales, the sonns of knights, esquiers, gentlemen, ministers, yeomen, and tradesmen, come up from their particular places of nativity and are bound to be prentices in London." He also mentions "the unanimous correspondence that is amongst that innumerable company." In the sixteenth and seventeenth centuries there are recorded a constant succession of tumults, and some instances of serious and alarming insurrections among the apprentices. Thus the fatal riot in London against foreign artificers, which took place on the 1st of May, 1517, and from which that day was called 'Evil May-Day,' was commenced and encouraged by the apprentices. In the year 1595, certain apprentices in London were imprisoned by the Star-Chamber for a riot; upon which, several of their fellows assembled and released them by breaking open the prisons. Many of these were taken and publicly whipped by order of the Lord Mayor. This caused a much more formidable disturbance; for 200 or 300 apprentices assembled in Tower-street, and marched with a drum in a warlike manner to take possession of the person of the Lord Mayor, and, upon the principle of retaliation, to whip him through the streets. Several of the ring-leaders in this riot were tried and convicted of high treason. (*Criminal Trials*, vol. i. p. 317.)

In the troubles of the civil wars the apprentices of London took an active part as a political body; numerous petitions from them were presented to the parliament, and they received the thanks of the House "for their good affections." Nor did they confine their interference merely to petitions, but, under sanction of an ordinance of parliament which promised them security against forfeiture of their indentures, they were enrolled into a sort of militia. They also took part in the Restoration, and in the reign of Charles II. they were frequently engaged in tumults. The last serious riot in which they were concerned took place in 1668. On this occasion they assembled together tumultuously during the holidays, and proceeded to pull down the disorderly houses in the city. For this exploit several of them were tried and executed for high treason.

In 1681, when Charles II. was desirous of strengthening his hands against the corporation of London, he thought it necessary to endeavour to secure the favour of the apprentices, and sent them a brace of bucks for their annual dinner at Sadlers' Hall, where several of his principal courtiers dined with them. The apprentices, however, were divided in opinion; for there were numerous petitions from them both for and against the measures of the court. Subsequently to this time their union appears to have been gradually dissolved, and we do not find them again acting together in a body.

The apprentice laws were enacted at a time when the impolicy of such legislation was not perceived. But opinion gradually became opposed to these enactments, and the judges interpreted the law favourably to freedom of trade. Lord Mansfield denounced the apprentice laws as being "against the natural rights of man, and contrary to the common law rights of the land." Accordingly the decisions of the courts tended rather to confine than to extend the effect of the statute of Elizabeth, and thus the operation of it was limited to market-towns, and to those crafts, mysteries, and occupations which were in existence at the time it was passed. And although, in consequence of this doctrine, many absurd decisions were made, yet the exclusion of some manufactures, and particularly of the principal ones of Manchester and Birmingham, from the operation of the act, had probably a favourable effect in causing it to be less strictly enforced even against those who were held to be liable to it. It was proved by a mass of evidence produced before a committee of the House of Commons in

1814, that the provisions of the statute of Elizabeth neither were nor could be carried into effect in our improved state of trade and manufactures. An alteration in the law could therefore be no longer delayed. And though the question was brought before the legislature on a petition praying that the 5 Eliz. c. 4, might be rendered more effectual, the result was the passing of an act (54 Geo. III. c. 96) by which the section of that statute which enacts that no person shall exercise any art, mystery, or manual occupation without having served a seven years' apprenticeship to it, was wholly repealed. There is in the act of 54 Geo. III. c. 96, a reservation in favour of the customs and bye-laws of the city of London, and of other cities, and of corporations and companies lawfully constituted; but the necessity of apprenticeship as a means of access to particular trades is abolished, and a perfect liberty in this respect is established. Apprenticeship however is one mode of acquiring the freedom of municipal boroughs.

Apprenticeship, though no longer legally necessary (except in a few cases), still continues to be the usual mode of learning a trade or art, and contracts of apprenticeship are very common. By common law, an infant, or person under the age of twenty-one years, being generally unable to form any contract, cannot bind himself apprentice so as to entitle his master to an action of covenant for leaving his service or other breaches of the indenture. The statute 5 Eliz. c. 4, s. 42 and 43, enacts that every person bound by indenture according to the statute, although within the age of twenty-one, shall be bound as amply, to every intent, as if he were of full age. But by these words of the statute, the infant is not so bound that an action can be maintained against him upon any covenant of the indenture; and it has therefore been a common practice for a relation or friend to be joined as a contracting party in the indenture, who engages for the faithful discharge of the agreement. But by the custom of London, an infant, unmarried, and above the age of fourteen, may bind himself apprentice to a freeman of London, and it is said that, by force of the custom, the master may have such remedy against him as if he were of full age, and consequently an action of covenant.

By the statute 43 Eliz. c. 2, s. 4, the churchwardens and overseers of a parish, with the assent of two justices of the peace, might bind children of paupers apprentices till the age of twenty-four; but by 18 Geo. III. c. 47, they could not be retained as apprentices beyond their 21st year. Under other acts, not only persons in husbandry and trade, but gentlemen of fortune and clergymen, may be compelled to take pauper children as apprentices. But if such master is dissatisfied, he may appeal to the sessions. Parish apprentices may also be bound (2 & 3 Anne, c. 6) to the sea service; and masters and owners of ships are obliged to take one or more according to the tonnage of the vessel. The number of apprenticed seamen who were registered in 1840, pursuant to 5 & 6 Will. IV. c. 19, was 24,348. Various regulations have been made by several acts of parliament, and in particular by 56 Geo. III. c. 139, for ensuring that parish apprentices shall be bound to proper masters, and securing them from ill-treatment. By 4 & 5 Will. IV. c. 76, s. 61, justices must certify that the rules of the Poor Law Commissioners as to the binding of parish apprentices have been complied with, but the Poor Law Commissioners have not yet issued any rules and regulations on this subject. In 7 & 8 Vict. c. 101, for the further amendment of the Poor Law, the Commissioners are invested with the power of carrying out certain matters relating to parish apprentices. There is a clause in the act abolishing compulsory apprenticeship. In 1842 an act was passed which extends the power of magistrates to adjudicate in cases in which no premium has been paid. (5 Vict. c. 7.) A settlement is gained by apprentices in the parish where they last resided forty days in service (13 & 14 Charles II. c. 12). [SETTLEMENT.] By 5 & 6 Vict. c. 99, all indentures whereby females are bound to work in mines are void.

An indenture cannot be assigned over, either by common law or equity, but by custom it may. Thus, by the custom of

London and other places it may be done by a "turn-over." Parish apprentices may also (32 Geo. III. c. 57, s. 7), with the consent of two justices, be assigned over by indorsement on the indentures.

An indenture is determinable by the consent of all the parties to it; it is also determined by the death of the master. But it is said that the executor may bind the apprentice to another master for the remainder of his term. And if there is any covenant for maintenance, the executor is bound to discharge this as far as he has assets. In the case of a parish apprentice (32 Geo. III. c. 57, s. 1), this obligation only lasts for three months, where the apprentice-fee is not more than 5*l.*, and the indenture is then at an end, unless upon application by the widow or executor, &c. of the master, to two justices, the apprentice is ordered to serve such applicant for the remainder of the term. By the custom of London, if the master of an apprentice die, the service must be continued with the widow, if she continue to carry on the trade. In other cases it is incumbent on the executor to put the apprentice to another master of the same trade. By the Bankrupt Act, 6 Geo. IV. c. 16, s. 49, it is enacted, that the issuing of a commission against a master shall be a complete discharge of an indenture of apprenticeship; and where an apprentice-fee has been paid to the bankrupt, the Commissioners are authorized to order any sum to be paid out of the estate for the use of the apprentice which they may think reasonable. A duty on apprentices' indentures, varying with the premium, was first imposed by 8 Anne, c. 9.

A master may by law moderately chastise his apprentice for misbehaviour; but he cannot discharge him. If he has any complaint against him, or the apprentice against his master, on application of either party to the sessions, by 5 Eliz. c. 4, or to two justices in the case of a parish apprentice, by 20 Geo. II. c. 19, and other acts, a power is given to punish or to discharge the apprentice, and in some cases to fine the master. If any apprentice, whose premium does not exceed 10*l.*, run away from his master, he may be compelled (6 Geo. III. c. 25) to serve beyond his term for the time which he absented himself, or make suitable satisfaction, or be imprisoned for three months. If he enters another person's service, his master is entitled to his earnings, and he may bring an action against any one who has enticed him away.

In London, in case of misconduct by the master towards the apprentice, or by the apprentice towards the master, either party may summon the other before the chamberlain, who has power to adjudicate between them, and, upon the disobedience or refractory conduct of either party, may commit the offender to Bridewell. The wardens of the different Livery Companies had formerly jurisdiction in matters of disputes between the apprentices and masters in their respective crafts; and in Herbert's 'History of the Twelve principal Companies' there is some curious information respecting regulations for apprentices, their dress, duties, &c.

We cannot fairly judge the institution of Apprenticeship, without an accurate examination of the circumstances under which it arose. That it had its uses cannot be doubted, and the continuance of the practice in this country, since it has ceased to be required by law, is some evidence in favour of the institution. Except in the case of surgeons and apothecaries, proctors, solicitors, attorneys, and notaries, there is now no apprenticeship required by law in England.

The impolicy of the old apprentice laws as they existed in France and England has been shown by many writers (Droz, *Economie Politique*, p. 114, &c.; Adam Smith, *Wealth of Nations*, book i. chap. 10). These laws and regulations were either part of the system of guilds, or were made in conformity to the objects of such system. Adam Smith says that apprenticeships were "altogether unknown to the ancients;" and "the Roman law is perfectly silent with regard to them." This may be so: but as the guilds or companies in Rome (collegia) were very numerous, it is possible that they had for their object to limit the numbers of those who should practise their several arts and mysteries; and apprenticeships might be one mode of effecting this, though it is true, as Adam Smith observes, that there appears

to be "no Greek or Latin word which expresses the idea we now annex to the word apprentice, a servant bound to work at a particular trade for the benefit of a master, during a term of years, upon condition that the master shall teach him that trade." It has been observed on this, that such a word could not have been required, when nearly all who worked for a master were slaves. But if many or most of the workmen were slaves, the masters were not, and the members of the companies could not be slaves. Adam Smith asserts that long apprenticeships are altogether unnecessary; and he affirms that "the arts which are much superior to common trades, such as those of making clocks and watches, contain no such mystery as to require a long course of instruction." But in this and other passages, he rather underrates the time that is necessary for attaining sufficient expertness in many arts, though he truly observes that agriculture, in which our law never required apprenticeship, and in which apprenticeship is little in use, and "many inferior branches of country labour, requires much more skill and experience than the greater part of mechanic trades." Wherever the law allows the contract of apprenticeship to be unrestrained, its terms will be regulated by custom, which though it may be sometimes unreasonable or absurd, must finally adapt itself to true principles in a country where industry is free and wealth is consequently accumulating. Those who have an art, mystery, craft, or trade to teach, and can teach it well, and give a youth every opportunity of learning it sufficiently, will always be sought after by parents and guardians of children in preference to other masters, and the terms of the contract will be less favourable in a pecuniary point of view to the parent or guardian than in cases where the master cannot offer those advantages. The good master may require a sum of money with the apprentice, and may require his services for a longer period than is necessary for him to master the mystery, craft, or trade. In other cases a master may often be glad to get an apprentice, that is, in other words, a servant, for as long a time as he can, and without requiring any money with him. The contract of apprenticeship in various trades will, as already observed, be regulated by custom, but it cannot remain unaffected by the general principles of the demand and supply of labour.

In most professions of the more liberal kind there is in England no contract of apprenticeship; the pupil or learner pays a fee, and has the opportunity of learning his teacher's art or profession if he pleases. Thus a man who intends to be called to the bar pays a fee to a special pleader, a conveyancer, or an equity draftsman, and has the liberty of attending at the chambers of his teacher and learning what he can by seeing the routine of business and assisting in it. But he may neglect his studies, if he pleases, and this will neither concern his master, who can very well dispense with the assistance of an ignorant pupil, and gets the money without giving anything for it, nor the public. For though the barrister is admitted by the inns of court without any examination, and may be utterly ignorant of his profession, no mischief ensues to the public, because the rules of the profession do not permit him to undertake business without the intervention of an attorney or solicitor, and no one would employ him without such intervention. But the attorney or solicitor is required by act of parliament to serve a five years' apprenticeship, the reasons for which are much diminished since the institution of an examination by the Incorporated Law Society in Chancery Lane, London, before he can be admitted to practise. Indeed a part of the time which is now spent in an attorney's office would be much better spent at a good school, and would perhaps cost the parent or guardian as little. There is frequently a fee paid with an apprentice to an attorney or solicitor, and there is a stamp duty of 120*l.* on his indentures; so that it is probable that the raising of revenue was one object in legislating on this matter. Persons who practise as physicians serve no apprenticeship, but they are subjected to examinations; all persons who practise as apothecaries must serve a five years' apprenticeship. The reasons for this apprenticeship also are much diminished by the institution of examinations, at which persons are rejected

who have not the necessary knowledge, though they have served the regular period of apprenticeship. If the examination of the attorney and apothecary is sufficiently strict, that is a better guarantee for their professional competence than the mere fact of having served an apprenticeship. Yet the apprenticeship is some guarantee for the character of the apothecary and solicitor, which the examination alone cannot be, for a youth who has much misconducted himself during his apprenticeship cannot receive the testimonial of his master for good conduct, and he is liable to have his indentures cancelled. The attorney and apothecary belong to two classes whose services are constantly required by the public, who have little or no means of judging of their professional ability. A man can tell if his shoemaker or tailor uses him well, but his health may be ruined by his apothecary, or his affairs damaged by his attorney, without his knowing where the fault lies. There is no objection, therefore, to requiring apprenticeship or any other condition from an attorney or apothecary which shall be a guarantee for his professional competence, but nothing more should be required than is necessary, and it is generally agreed that an apprenticeship of five years is not necessary. If, however, the law were altered in this respect, it is very possible that the practice of five years' apprenticeship might still continue; and there would be no good reason for the law interfering if the parties were willing to make such a contract.

In all those arts, crafts, trades, and mysteries which a boy is sent to learn at an early age, a relation analogous to that of master and servant, and parent and child, is necessary both for the security of the master and the benefit of the boy. Adam Smith speaks of apprenticeship as if the only question was the length of time necessary to learn the art or mystery in. If parents can keep their children at home or at school till they approach man's estate, the control created by the contract of apprenticeship is less necessary, and the term for serving a master need not be longer than is requisite for the learning of the art. Still, if the contract is left free by the law, it will depend on many circumstances, whether the master will be content with such a period; he may require either more money with the apprentice and less of his service, or less of his money and more of his service. This is a matter that no legislator can usefully interfere with. But when boys leave home at an early age, and are sent to learn an art, it is necessary that they should be subjected to control, and for a considerable period. They must learn to be attentive to their business, methodical, and well-behaved; and if their master sets them a good example, the moral discipline of a boy's apprenticeship is useful. If the master does not set a good example, the effect will be that he will not be so likely to have apprentices; for an apprenticeship partakes of the nature of a school education, an education in an art or mystery, and a preparation for the world; and a master who can best prepare youths in this threefold way is most likely to have the offer of apprentices.

APPRISING. [Adjudication.]

APPROPRIATION. [Advowson.]

APPROVER. By the old English law, when a person who had been arrested, imprisoned, and indicted for treason or felony, confessed the crime charged in the indictment, and was admitted by the court to reveal on oath the accomplices of his guilt, he was called an *approver*.

The judge or court might in their discretion give judgment and award execution upon the party confessing, or admit him to be an approver. In the latter case a coroner was directed to receive and record the particulars of the approver's disclosure, which was called an *appeal*, and process was thereupon issued to apprehend and try the *appellees*, that is, the persons whom the approver had named as the partners of his crime.

As the approver, in revealing his accomplices, rendered himself liable to the punishment due to the crime which he had confessed, and was only respited at the discretion of the court, it was considered that an accusation, made under such circumstances, was entitled to peculiar credit, and the accomplices were

therefore put upon their trial without the intervention of a grand jury.

Here, however, as in other appeals [APPEAL], the parties accused by the approver were allowed to choose the mode of trial, and the approver might be compelled to fight each of his accomplices in succession. But, unlike an appeal by an innocent person, the prosecution at the suit of an approver might be defeated and discharged by a pardon granted by the king either to the approver or to the appellee.

If the approver failed to make good his appeal, judgment of death was given against him. If he succeeded in convicting the appellee, he was entitled to a small daily allowance from the time of being admitted approver, and to a pardon from the king.

The appeal by approvers had become obsolete before the abolition of it by parliament; and the present practice is to prefer a bill of indictment against all parties implicated in the charge, except the approver, and to permit the criminal who confesses his guilt to give evidence against his companions before the grand jury. If upon the trial the demeanour and testimony of the accomplice are satisfactory to the court, he is recommended to the mercy of the crown. (See 2 Hawk., *Crown Law*, ch. 24.)

ARBITRATION is the adjudication upon a matter in controversy between private individuals appointed by the parties. This mode of settling differences is very frequently resorted to as a means of avoiding the delay and expense of an action at law or a suit in equity. It has the advantage of providing an efficient tribunal for the decision of many causes —such, for instance, as involve the examination of long and complicated accounts,—which the ordinary courts are, from their mode of proceeding and the want of proper machinery, incompetent to investigate.

The person appointed to adjudicate is called an arbitrator, or referee. The matter on which he is appointed to adjudicate is said to be referred or submitted to arbitration. His judgment or decision is called an arbitrament, or, more usually, an award.

Most matters actually in controversy between private persons may be referred to arbitration; but an agreement to refer any differences which may hereafter arise is not binding, for the parties cannot be compelled to name an arbitrator. But an agreement may be made to refer any dispute that may arise to arbitration, with a condition of certain penalties, to be paid by the party who shall refuse to agree in the appointment of an arbitrator. No injury can be the subject of an arbitration, unless it is such as may be a matter of civil controversy *between the parties:* a felony, for instance, which is a wrong, not to the party injured merely, but to society in general, cannot be referred.

There are no particular qualifications required for an arbitrator. In matters of complicated accounts, mercantile men are usually preferred. In other cases, it is usual to appoint barristers, who, being accustomed to judicial investigations, are able to estimate the evidence properly, to confine the examination strictly to the points in question, and, in making the award, to avoid those informalities for which it might afterwards be set aside. Both time and expense are thus saved by fixing on a professional arbitrator. Any number of persons may be named as arbitrators: if the number is even, it is usually provided that, if they are divided in opinion, a third person shall be appointed, called an umpire, to whose sole decision the matter is then referred.

A dispute may be referred to arbitration, either—1. When there is an action or suit already pending between the parties relating thereto, or—2. When there is no such action or suit.

1. In the former case, the parties to the action or suit, if *sui juris*, are in general competent to submit to arbitration. The reference may be made at any stage of the proceedings: if before trial, it is effected by a rule of the court of law or an order of the court of equity in which the action or suit is brought; if at the trial, by an order of the judge or an order of Nisi Prius, either of which may afterwards be made a rule of court. The usual mode of proceeding in a case referred to arbitration where an action is pending, is for

the parties to consent that a verdict shall be given for the plaintiff for the damages laid in the declaration, subject to the award of the arbitrator.

The person named as arbitrator is not bound to accept the office, nor, having accepted, can he be compelled to proceed with it. In either case, if the arbitrator refuses or ceases to act, the reference is at an end, unless the contingency has been provided for in the submission, or unless both parties consent to appoint some other person as arbitrator in his stead.

The order of reference usually provides that the award shall be made within a certain period; and if the arbitrator lets the day slip without making his award, his authority ceases, but a clause has usually been inserted to enable the arbitrator to enlarge the time; and now, independently of any such clause, the court, or any judge thereof, is, by the late statute for the amendment of the law (3 & 4 Will. IV. c. 42), empowered to do so. The authority of an arbitrator ceases as soon as he has made or declared his award. After this (even though it be before the expiration of the time appointed) he has no longer the power even of correcting a mistake.

When the arbitrator has accepted his office, he fixes the times and place for the parties to appear before him. Each of them furnishes him with a statement of his case, which is usually done by giving him a copy of the briefs on each side; and on the day appointed he proceeds to hear them (either in person, or by their counsel or attorneys), and to receive the evidence on each side, nearly in the same manner as a judge at an ordinary trial: but he is frequently invested by the order of reference, with a power of examining the parties themselves.

No means existed of compelling the attendance of witnesses, or the production of documents, before an arbitrator, until the statute 3 & 4 Will. IV. c. 42, authorized the court or a judge to make an order to that effect; disobedience to which order, if served with proper notice of the time and place of attendance, becomes a contempt of court. The witnesses, thus compelled to attend, are entitled to their expenses in the same manner as at a trial. And where the order requires the witnesses to be examined upon oath, the arbitrator is by the same statute authorized to administer an oath or affirmation, as the case may require; and any person who gives false evidence may be indicted for perjury.

The extent of an arbitrator's authority depends on the terms of the reference: it may either be confined to the action pending between the parties, or it may include any other specified grounds of dispute, or all disputes and controversies whatever existing between them at the time of the reference. Where the matters referred to him are specified, it is his duty to decide upon them all; where they are not specified, it is his duty to decide upon as many as are laid before him. In no case is an arbitrator authorized to adjudicate upon anything not comprehended in the reference; such, for instance, as any claims or disputes which may have arisen after the reference was made, or, where the reference is specific, anything not expressly included in it.

An arbitrator being a judge appointed by the parties themselves for the settlement of their differences, his decision on the merits of the case submitted to him is conclusive. But if his award be partially or illegally made, the superior courts have the power of setting it aside, upon application being made within reasonable time. This happens either, 1. where the award is not co-extensive with the arbitrator's authority; or, 2. where it appears on the face of it to proceed on mistaken views of law, or to fail in some of the qualities required for its validity; or, 3. where any misconduct has been committed. This may happen in two cases: 1st, where the arbitrators have been guilty of corruption or other misbehaviour, as, if they have proceeded to arbitrate without giving notice of the meeting, have improperly refused to receive evidence, or committed any other gross irregularity in practice: 2ndly, where it is proved that the arbitrator has been misled by fraud used by either of the parties. Where an award is absolutely void, as where it is made after the authority of the arbitrator has ceased, it is

not in general necessary to set it aside, for it is incapable of being enforced.

When the award has been made and delivered, if one of the parties refuses to comply with it, the other may bring an action against him on the award. But the most prompt and efficient remedy is to apply to the court for an attachment, grounded on the contempt of court which he has been guilty of by disobeying the order of reference. In opposing this application, the other party may insist on any objection apparent on the award itself; but if there were any other objections affecting its validity, and he has neglected to apply to the court to set it aside within the time fixed by them for that purpose, it is too late for him to avail himself of them.

When, in the original action, a verdict has been given for the plaintiff subject to a reference, if the defendant does not abide by and perform the award, the plaintiff may, by leave of the court, enter a judgment and sue out execution for the whole damages mentioned in the verdict.

2. Where no action has been commenced, the parties may refer their differences to arbitration by mutual agreement. Every person capable of making a disposition of his property may be party to such an agreement: no peculiar form is necessary for its validity.

Whether the submission be verbal or in writing, it is in the power of either of the parties to revoke it, and thus put an end to the authority of the arbitrator at any time before the award is made. In order to prevent this, it is usual for the parties to make it a part of their agreement, that they will abide by and perform the award; and if after this either of them should, without sufficient reason, revoke his submission, or otherwise prevent the arbitrator from proceeding with the arbitration, he will be liable to an action for the breach of his agreement.

The time for making the award may be enlarged, if there be a clause to that effect in the agreement of submission, or if all the parties consent to it, but not otherwise. There are no means of compelling the attendance of witnesses, nor has the arbitrator the power of administering an oath; but the witnesses and —if they have agreed to be examined— the parties are sworn either before a judge, or, in the country, before a commissioner. They may, however, be examined without having being sworn, if no objection is made to it at the time.

The courts cannot enforce performance of the award by attachment; the only remedy is an action on the award itself, or rather, on the agreement of submission. The defendant may insist on any objection apparent on the award itself, but where there is any other ground for setting it aside, his only remedy is by a bill in equity.

Thus where the reference is by agreement, many inconveniences occur, particularly from the deficiency of the remedies: but the statute 9 & 10 Will. III. c. 15, enables parties to put such references on the same footing as those which are made where a cause is depending. The statute enacts that all merchants and others, who desire to end any controversy, suit, or quarrel (for which there is no other remedy but by personal action or suit in equity), may agree that their submission of the suit to arbitration or umpirage shall be made a rule of any of the king's courts of record, and may insert such agreement in their submission, or promise, or condition of the arbitration bond; which agreement being proved on oath by one of the witnesses thereto, the court shall make a rule that such submission and award shall be conclusive; and after such rule made, the parties disobeying the award shall be liable to be punished as for a contempt of the court; unless such award shall be set aside for corruption or other misbehaviour in the arbitrators or umpire, proved on oath to the court, within one term after the award is made. The provisions of the new statute 3 & 4 Will. IV. c. 42, apply as well to arbitrations made in pursuance of such agreements of submission, as to those made by order of court; and the law is the same in both cases, except in some few points of practice.

Previously to the 3 & 4 Will. IV. c. 42, the authority of the arbitrator was revocable by either party at any time before the award was made; but by that

statute it is declared that the authority of an arbitrator cannot be revoked by any of the parties, without the leave of the court or a judge: but it is still determined by the death of any of the parties, unless a clause to obviate this is inserted in the submission; and if one of the parties is a single woman, her marriage will have the same effect.

The settlement of disputes by arbitration was usual among the Athenians. Aristotle, in giving an instance of a metaphor that is appropriate without being obvious, quotes a passage from Archytas, in which he compares an arbitrator to an altar, as being a refuge for the injured. He also (*Rhetor.* i. 13) contrasts arbitration with legal proceedings, and adds that the arbitrator regards equity, but the discast (judge in the courts) regards the law (Aristotle, *Rhetor.* iii. 11.) There were at Athens two modes of proceeding which passed by the name of arbitration —the Greek word for which is diæta (δίαιτα). In one of these the arbitrators (διαιτηταί) appear to have constituted what in modern jurisprudence would be called a Court of Reconcilement. A certain number of persons, of a specified age, were chosen by each tribe, and probably for one year only, as official referees, and from among these the arbitrators to decide upon each particular case were afterwards also chosen (Petit, *Leges Atticæ*, p. 345; Heraldus, *Animadversiones*, p. 370), and were then bound to act, under the pain of infamy. They sat in public, and their judgments were subscribed by the proper authorities, though it does not appear who those authorities were. (Petit, p. 346.) An appeal lay from their decision to the ordinary courts; and sometimes the arbitrator referred the cause to their judgment at once, without pronouncing any sentence of his own. (Heraldus, *Animadversiones*, p. 372). The jurisdiction of the arbitrators was confined to Athenian citizens, and they took no cognizance of suits in which the sum in dispute was less than ten drachmæ, such smaller actions being disposed of in a summary manner, by a special tribunal. The litigant parties paid the expenses of the arbitration. (Boeckh, *Public Œcon. of Athens*, i. 316, *English Trans.*) When their year of office expired, the arbitrators were liable to be called to account for their conduct, and if found guilty of corruption or misconduct, were punished with infamy (ἀτιμία).

In the other mode of proceeding, which was strictly in accordance with the definition which we have given of arbitration, the parties were at liberty to refer their differences to whomsoever they chose. The submission was generally made by a written agreement, which frequently contained an engagement by third persons to become sureties for its performance. (Demosthenes, *Speech against Apaturius*, chap. 4.) There lay no appeal from the award of the arbitrator to any other tribunal, unless probably such a right of appeal was reserved in the agreement. (See the law quoted by Demosthenes against Meidas, chap. 26.)

The Roman law upon this subject is much better understood, and is of infinitely greater importance. Its influence has extended over the whole of Europe, and even in our own country it is evident that references made by virtue of a mutual agreement — apparently the first species of arbitration known in our law —are mainly founded upon the doctrines contained in the Digest, iv. tit. 8. The only mode of referring a matter to arbitration in the Roman law was by an agreement called *compromissum*, which contained the names of the arbitrators (hence called *arbitri compromissarii*), the matters intended to be referred, and an undertaking by both parties to abide by the award, or in default thereof to pay to the other a certain sum of money as a penalty. The rule which forbids matters of public interest to be submitted to the judgment of a private referee, was not confined in its operation to criminal prosecutions and penal actions, but extended to preclude arbitrators as well from entertaining any question affecting the civil condition (*status*) of any individual,—his freedom, for instance,—as from deciding on the validity of any contract which it was attempted to set aside on the ground of its having been obtained by fraud or force.

The persons named as arbitrators were not bound to undertake the office, but

having once done so, they might, by an application to the prætor, be compelled to go through with it. Their authority was terminated by the death of either of the parties, unless his heirs were included in the submission; by the expiration of the time limited for the decision; by either party having broken the agreement, and so incurred the penalty; or by his becoming insolvent, and his property, in consequence of a *cessio bonorum*, being vested in his creditors. Their authority also ceased by what we should call an implied revocation, if the subject matter of the reference perished, or if the parties settled the dispute in some other way, referred it to other arbitrators, or proceeded with an action respecting it. Besides the cases in which his authority was thus at an end, an arbitrator could not be compelled to proceed with the reference if he could allege any sufficient excuse, as for instance, that the submission was void, that there had arisen a deadly enmity between him and one of the parties, or that he had been prevented by ill-health, or by an appointment to some public office.

The extent of the arbitrator's authority depended upon the terms of the submission, which might be either special or general. The submission usually appointed a certain day for the making of the award, but power was generally given to the arbitrators to enlarge the time if necessary, and they could not give their award on an earlier day without the consent of the parties. On the day originally appointed, or on that subsequently fixed by the arbitrators, they formally pronounced their award, and (unless it had been agreed otherwise) the parties were required to be present, and if one of them failed to appear, the award was not binding, but the party who had thus prevented the arbitration being completed incurred the penalty specified in the submission. If there were several arbitrators, all were bound to attend, and the opinion of the majority prevailed; and if they were equally divided, it is said that they might of their own authority appoint an umpire, and in case of their refusing, the prætor had the power of compelling them to do so. When their award was pronounced, their authority expired, and they could neither retract nor alter their decision.

The award when made had not the authority of the sentence of a court of justice, nor was there any direct method of enforcing the performance of it; but as the parties had bound themselves to abide by the arbitrator's decision, if either of them refused to perform it, or in any other way committed a breach of his engagement, he was liable to an action; and however unsatisfactory the award might appear, there was no appeal to any other court. If, indeed, the arbitrators had been guilty of corruption, fraud, or misconduct, or if they had not adhered to their authority, their award was not binding: there was, however, no direct method of setting it aside; but if an action was brought to enforce the award, such misconduct might be insisted on as an answer to it. (Heineccius, *Elem. Jur. Civ.* pars i. § 531-543; Voetius, *Commentarius ad Pandect.* vol. i. pp. 290-300.)

The Roman law was, with some slight modifications, adopted in France (Domat, *Civil Law*, part i. book i. tit. 14; and *Public Law*, book ii. tit. 7; Pothier, *Traité de Procédure Civile*, part ii. chap. iv. art. 2), and notwithstanding the changes which have been introduced from time to time, it still forms the groundwork of the system. There are at present three kinds of arbitration; the first is voluntary arbitration, which is founded, as in the Roman law, upon an agreement of the parties. The mode of proceeding in this case is treated of at considerable length, and with minute attention to details, in the *Code de Procédure Civile*, art. 1003-1028.

The ordinary courts exercise a much greater control over the proceedings in references than they do in England, but they have never had the power which the magistrates had at Rome—of compelling a person who had once undertaken the office of arbitrator to proceed with it; nevertheless, if he fail to do so, without a sufficient excuse, he is liable to an action for the damages occasioned by his neglect of duty. In order to understand clearly the peculiarities of the French system, it will be necessary to bear in mind that the proceedings before the

arbitrators are much more nearly on the same footing with the regular administration of justice than is the case with us, and that many of the details are merely adopted from the practice of the ordinary courts: for instance, there is a system of local judicature established in France, and as the judge is resident in the neighbourhood of the suitors, it has been found necessary, in order to guard against partiality or the suspicion of partiality, to allow either party to refuse or challenge a judge, as in England they would challenge a juryman; and in the same manner an arbitrator may be challenged, but this can only be in respect of some objection which has arisen since his appointment, for the very act of appointing him is an implied waiver of any objections which might have existed up to that time; but if there is no ground for challenge, the arbitrator's authority cannot be revoked without the consent of both parties.

An arbitrator's decision or award is considered as a judgment, and all the formalities required for the validity of a judgment must therefore be observed; but execution of it cannot be enforced until it has received the proper sanction: this sanction is conferred by a warrant of execution granted by the president of the tribunal within the jurisdiction of which the cause of the action arose: the granting of this warrant is called the homologation of the award. If the arbitrator has not strictly pursued his authority, the warrant of execution may be superseded, and the award declared null by an application to the tribunal from which the warrant issued. Besides this, the same modes of obtaining relief may be resorted to in the case of an award, as in that of any other judgment. If any misconduct or irregularity has occurred, the award may be set aside by what is called a *requête civile;* and even where nothing can be alleged against the formal correctness of the proceedings, if one of the parties be dissatisfied with the judgment, he is at liberty (unless the right has been expressly renounced) to appeal to a superior court: when this happens, the whole case is re-opened before the tribunal of appeal, and the merits investigated anew; and when an award is brought under the consideration of a court in any of these ways, any final judgment which the court may have pronounced may be brought before the Court of Cassation, and there quashed if erroneous in point of law.

The second kind, which is called "compulsory arbitration," is where the parties are by law required to submit to a reference, and are precluded from having recourse to any other mode of litigation. The ancient laws of France introduced this species of arbitration very extensively for the settlement of disputes respecting either mercantile transactions or family arrangements; but by the law now in force, it is admitted in one case only, that of differences between partners. Over such differences the ordinary courts have no jurisdiction in the first instance, even with the consent of the parties; but the commercial courts control the proceedings. Thus the arbitrators may either be appointed by the deed of partnership or afterwards nominated by the partners; but if, when a dispute has arisen, one of the partners refuses to nominate an arbitrator or nominates an improper person, the commercial court, upon application made by the other partner, will appoint one for him. The authority of the person so appointed will be superseded, if before he enters upon his functions an arbitrator is duly nominated by the partner in delay: and when the firm consists of several partners, upon an application being made by any one of them, the court, after taking into consideration how far their respective interests are identical and how far they are conflicting, will regulate accordingly the number of arbitrators to be appointed by each. The sentence of the arbitrators, howsoever appointed, is decided by the majority of votes.

The authority of the arbitrators in this case partakes more of the judicial character than it does in voluntary arbitration; they are considered as substituted for the ordinary commercial tribunal; their sentence is registered among the records of the court; and they stand upon the same footing with the court in the power of sentencing the parties to imprisonment; and unless the right has been renounced

by the parties, there is an appeal from their decision. (*Code de Commerce*, art. 51-64.)

Besides the compulsory arbitration in matters of partnership, the parties who enter into any engagement are at liberty to stipulate that all differences arising between them shall be submitted to arbitration. This stipulation is compulsory, and the court will, if requisite, appoint an arbitrator ex officio for the party who should refuse to do so; but it is not exclusive, so as to take away the jurisdiction of the ordinary tribunals; it may be rescinded by the consent of the parties, or waived by their acts.

The third kind of arbitration is distinguished by the appellation of the persons to whom the reference is made; they are not called, as in the other cases, *arbitres*, but *aimables compositeurs*, or in the old law, *arbitrateurs*. The peculiar characteristics of this amicable composition are, that the referees are not, as in other cases, bound to adhere rigorously to the rules of law, but are authorized to decide according to the real merits of the case; that their decision is final, and without appeal to any other tribunal. In case of irregularity or misconduct, the award may be set aside by the judgment of a court, but this judgment cannot be further questioned in the Court of Cessation. This modification of the general law may be introduced into all arbitrations, whether voluntary or compulsory. (Pardessus, *Cours de Droit Commercial*, § 1386-1419.)

In Denmark and its dependencies, Courts of Arbitration or Conciliation were established about the year 1795, and are said to have been attended with extremely beneficial effects. In Copenhagen the court is composed of one of the judges of the higher courts of judicature, one of the magistrates of the city, and one of the representatives of the commonalty. In other towns, the chief magistrate proposes five or six of the more respectable citizens for arbitrators, of whom the commonalty of the town elect two. In the country, the bailiffs or sheriffs are the arbitrators, and generally act as such personally; but in extensive districts they have authority to appoint deputies. All matters of civil litigation may be referred to these official arbitrators; who in the country sit once in every week, and in the capital as often as occasion requires. It appears that, after investigating a disputed case, the arbitrators in these tribunals have no power to compel the parties to settle their differences in the manner proposed by the court: if they agree, the terms of the arrangement are registered, and it has then the force of a judicial decree; if, after stating their differences and hearing the suggestions of the arbitrators, the parties still disagree, no record is made of the proceeding, and they are at liberty to discuss their respective rights in the ordinary courts of justice. It is necessary, however, that before a suitor commences an action in the superior courts, he should prove that he has already applied to one of the courts of conciliation. These courts, which are attended with very small expense to the suitors, were, soon after their establishment, multiplied rapidly in Denmark and Norway, and are said to have produced an astonishing decrease in the amount of contentious litigation. (*Tableau des Etats Danois*, par Catteau, tome i. p. 296.)

Courts of mutual agreement are constituted in every parish in Norway. Every third year the resident householders elect from among themselves a person to be the commissioner of mutual agreement, who must not practise law in any capacity. His appointment is subject to the approval of the amtman, or highest executive officer of the district. In towns, or large and populous parishes, there are one or more assessors or assistants to the commissioner, and he has always a clerk. He holds his court once a month within the parish, and receives a small fee of an ort (ninepence) on entering each case. Every case or law-suit whatever must pass through this preliminary court, where no lawyer or attorney is allowed to practise. The parties must appear personally or by a person not in the legal profession. The statement of each party is entered fully and to his own satisfaction in writing by the commissioner, who proposes some course on which they may both agree. If both

parties acquiesce in his judgment, the case is taken to the local court of law, or Sorenskrivers' court, which is also held within each parish, to be sanctioned, revised as to rights of any third parties, and registered, when it has the validity of a final decision. If one party agrees and the other does not, the party not agreeing appeals to the local or Sorenskrivers' court, which sits once, at least, in every parish in every quarter of a year; but he will have the expenses of both parties to pay, if the terms of agreement proposed and rejected are judged not unreasonable. In this higher court, which is, properly speaking, the lowest legal court, the parties may appear, if they choose, by their law agents; but in this and all the subsequent higher courts no new matter, statements, or reference are received but what stand in the protocol of the commissioner of the court of mutual agreement. (Laing's *Journal of a Residence in Norway*, 1836.)

ARBITRATION. In Scotland the system of arbitration is a modification of that of the Roman law. The submission, by which the parties agree to abide by the decision of an arbiter, is a regularly executed contract, and it requires all the solemnities peculiar to the execution of deeds in Scotland. According to the practice by which, on the consent of the parties to that effect embodied in its substance, a contract may be registered for execution, the submission may contain a clause authorizing the decree to be pronounced on it to be registered for execution; and when so registered, the arbiter's decision is in the same position as the decree of a court. It was formerly usual to embody a clause of registration for execution against the arbiter if he failed to give a decision. This practice is now disused, but it is still held, according to the doctrine of the civilians, that an arbiter who has accepted the submission can be judicially compelled to decide. Where there were two arbiters, and action was raised against one of them, either to concur with the other or name an oversman (umpire), "the court, without entering on the question how far a sole arbiter is bound to decide, were clear that against one of two arbiters the conclusions of the action were ill-founded."—(*White* v. *Fergus*, 7th July, 1796, M. 633.) The decree arbitral must be executed with the usual solemnities of written deeds in Scotland. A submission in which the arbiters are not named is not binding on the parties. If there be more than one arbiter, the decree is not valid unless they be unanimous. An oversman may be named in the submission, or the arbiters may be empowered to choose one. It is a condition precedent to any reference to an oversman, that the arbiters are not unanimous, and the proceedings of an oversman are null if there is no difference of opinion. The oversman's decree must bear that the arbiters differed in opinion. A time during which the submission is to be in force may be fixed with or without a power of prorogation. It has become a practice that when a blank space is left in the submission for the period of its continuance, that period is held to be a year. Where there is no such blank, it is presumed that the submission subsists for the period of what is called "the long prescription," viz. 40 years.

ARCHBISHOP. [Bishop.]

ARCHDEACON. In contemplating the character and office of the bishop in the early ages of the church, we are not to regard him as a solitary person acting alone and without advice. He had a species of clerical council around him, persons who lived a kind of collegiate life in buildings attached to the great cathedral church, each of whom, or at least several of whom, possessed distinct offices, such as those of chancellor, treasurer, precentor, and the like. These persons are now often called canons; but the most general name by which they are known, as the institution existed in remote times, is that of deacon, a term of which dean is a contraction. Deacon appears to come from the Greek term *diáconos* (διάκονος), the name of that officer in the church of whose appointment we have an account in *Acts*, vi. To one of these deacons precedence was given, and no doubt some species of superintendence or control, and to him the title of *archdeacon* was assigned.

In the name there is no indication of any peculiar employment. What now belongs to the archdeacon was anciently

performed by the officer in the bishop's court called the chorepiscopus. The chorepiscopus (Χωρεπίσκοπος) was the bishop's deputy or vicar in small towns and country places, in which he discharged the minor episcopal functions. He might be of episcopal rank or not (Ducange, *Glossarium*). The chorepiscopus is mentioned in a Constitution of Justinian. (*Cod.* i. tit. 3, s. 41 (42).) The manner in which the archdeacon usurped upon this obsolete officer and attracted to himself the functions which belonged to him, is supposed to have been this:—being near the bishop and much trusted by him, the archdeacon was often employed by the bishop to visit distant parts of the diocese, especially when the bishop required particular and authentic information, and to report to the bishop the actual state of things. Hence deacons were spoken of by very early Christian writers as being the *bishop's eye;* and from this power of inspection and report the transition was easy to the delegation, to one of the deacons, of a portion of episcopal authority, and empowering him to proceed to reform and redress, as well as to observe and report.

If this is a just account of the origin of the archdeacon's power, it is manifest that originally the power would be extended over the whole of a diocese; but at present it is confined within certain limits. In England, according to the *Valor Ecclesiasticus* of King Henry VIII., there are fifty-four archdeaconries, or districts through which the visitorial and corrective power of an archdeacon extends. Godolphin and Blackstone state that there were sixty archdeaconries: the number has since been increased, and there are now above sixty in England and Wales. Seven new archdeaconries were erected by 6 & 7 Will. IV. c. 97. These are the archdeaconries of Bristol, Maidstone, Monmouth, Westmoreland, Manchester, Lancaster, and Craven; and archidiaconal power was given by the same act to the dean of Rochester in that part of Kent which is in the diocese of Rochester. The constitution of some of these new archdeaconries is contingent; that of Manchester, for instance, will not take place until the creation of Manchester into a bishop's see, which will not occur until the next vacancy in the see of St. Asaph and Bangor.

This distribution of the dioceses into archdeaconries cannot be assigned to any certain period, but the common opinion is that it was made some time after the Conquest. It is said that Stephen Langton, archbishop of Canterbury, was the first English bishop who established an archdeacon in his diocese, about A.D. 1075. The office of archdeacon is mentioned in a charter of William the Conqueror. (Phillimore.) The bishops had baronies, and were tied by the constitutions of Clarendon to a strict attendance upon the king in his great council, and they were consequently obliged to delegate their episcopal powers. Each archidiaconal district was assigned to its own archdeacon, with the same precision as other and larger districts are assigned to the bishops and archbishops; and the archdeacons were entitled to certain annual payments, under the name of procurations, from the benefices within their archdeaconries. The act already cited (6 & 7 Will. IV. c. 97) directed a new arrangement of all existing deaneries and archdeaconries, so that every parish and extra-parochial place shall be within a rural deanery, and every deanery within an archdeaconry, and that no archdeaconry extend out of the diocese.

As the archdeacon in antient times intruded upon the chorepiscopus, so in recent times he has extinguished the authority and destroyed almost the name of another officer of the church, namely, the rural dean. The archdeaconries are still subdivided into deaneries, and it is usual for the archdeacon, when he holds his visitations, to summon the clergy of each deanery to meet him at the chief town of the deanery. Formerly, over each of the deaneries a substantive officer, called a dean, presided, whose duty it was to observe and report, if he had not even power to correct and reform; but the office has been laid aside in some dioceses, though in others it has been re-established. But where it has been superseded, the duties are discharged by the archdeacon. Though the office of rural

dean has been found extremely useful, no emolument whatever is attached to it.

Archdeacons must have been six full years in priests' orders (§ 27, 3 & 4 Vict. c. 27), and they are appointed by the respective bishops; they are inducted by being placed in a stall in the cathedral by the dean and chapter. By virtue of this *locus in choro* a *quare impedit* lies for an archdeaconry. (Phillimore.) The duty of archdeacons now is to visit their archdeaconries from time to time: to see that the churches, and especially the chancel, are kept in repair, and that everything is done conformably to the canons and consistently with the decent performance of public worship; and to receive presentations from the churchwardens of matter of public scandal. The visitation of the archdeacon may be held yearly, but he must of necessity have his triennial visitation. Archdeacons may hold courts within their archdeaconries, in which they may hear ecclesiastical causes and grant probates of wills and letters of administration; but an appeal lies to the superior court of the bishop. (24 Hen. VIII. c. 12.) By § 3 of 3 & 4 Vict. c. 86, the archdeacon may be appointed one of the assessors of the bishop's court in hearing proceedings against a clergyman. The judge of the archdeacon's court, when he does not preside himself, is called the Official. Sometimes the archdeacon had a peculiar jurisdiction, in which case his jurisdiction is independent of that of the bishop of the diocese, and an appeal lay to the archbishop. [PECULIAR.] But now, by 6 & 7 Wm. IV. c. 97, § 19, it is enacted that all archdeacons throughout England and Wales shall have and exercise full and equal jurisdiction within their respective archdeaconries, any usage to the contrary notwithstanding.

In the revenue attached to the office of archdeacon, we see the inconvenience which attends fixed money payments in connection with offices which are designed to have perpetual endurance. It arises chiefly from the payments by the incumbents. These payments originally bore no contemptible ratio to the whole value of the benefice, and formed a sufficient income for an active and useful officer of the church; but now, by the great change which has taken place in the value of money, the payments are little more than nominal, and the whole income of the archdeacons as such is very inconsiderable. The office, therefore, is generally held by persons who have also benefices or other preferment in the church. There have been in recent times cases where archdeacons have held prebends of cathedrals in other dioceses than that in which their jurisdiction was situated; and also instances in which they have had no cathedral preferment. The 1 & 2 Vict. c. 106, § 124, specially exempts archdeacons from the general operation of the act, by permitting two benefices to be held with an archdeaconry. An archdeacon is said to be a corporation sole. Among the recent acts which affect archdeacons the most important are 1 & 2 Vict. c. 106; 3 & 4 Vict. c. 113; and 4 & 5 Vict. c. 39.

Catalogues of the English archdeacons may be found in a book entitled 'Fasti Ecclesiæ Anglicanæ,' by John le Neve. Archdeaconries have been established in some, if not in all, of the dioceses of the new colonial bishops.

ARCHES, COURT OF, is the supreme court of appeal in the archbishopric of Canterbury. It derives its name from having formerly been held in the church of St. Mary le Bow (*de Arcubus*), from which place it was removed about 1567 to the Common Hall of Doctors' Commons, near St. Paul's Church, where it is now held. The acting judge of the court is termed Official Principal of the Court of Arches, or more commonly Dean of the Arches. This court has ordinary jurisdiction in all spiritual causes arising within the parish of St. Mary le Bow and twelve other parishes, which are called a deanery, and are exempt from the authority of the bishop of London. The Court of Arches has also a general appellate jurisdiction in ecclesiastical causes arising within the province of Canterbury, and it has original jurisdiction on subtraction of legacy given by wills which have been proved in the prerogative court of that province. The Dean of the Arches for the time being is president of the College of Doctors of Law, who practise in the Ec-

clesiastical and Admiralty Courts, incorporated by royal charter in 1768, and the advocates and proctors who practise in these courts receive their admission in the Arches Court. The judge is the deputy of the archbishop, who is the judge of the court. The Dean of Arches has always been selected from the College of Advocates. There are four terms in each year, and four sessions in each term. An appeal lay from this court to the Court of Delegates, or more strictly to the king in chancery (25 Henry VIII. c. 19), by whom delegates were appointed to hear each cause, the appeal being to him as head of the church, in place of the Pope. By 2 & 3 Will. IV. c. 92, appeals are transferred from the Court of Delegates to the king in council. The ecclesiastical courts are competent to entertain criminal proceedings in certain cases, and also to take cognizance of causes of defamation; for which last offence persons were formerly directed to do penance, but this has very rarely been required by the Arches Court of late years. There is no salary attached to the office of judge; and his income arising from fees, as also that of the registrar, is very small. One judge has for many years presided in the Arches and in the Prerogative Court.

There are no bye-laws, regulations, or resolutions made by proctors of the Arches or Prerogative Courts of Canterbury, relating to the articling of clerks to proctors, or to the admission of proctors. The articling of clerks and admission of proctors are regulated by a statute of the Archbishop of Canterbury, bearing date the 30th of June, 1696. By this statute, the number of proctors having then increased to forty, it was, among other things, ordained that there should be thirty-four proctors *exercent* in the Arches Court, each of whom should have power and privilege to take clerks apprentices, and that the remaining proctors should be esteemed and called supernumeraries, who should not have power to take such clerks until they should have succeeded into the number of the thirty-four; and that no proctor should take any clerk apprentice until he should have continued *exercent* in the Arches Court five years; that the term of service of a clerk should be seven years, and that no proctor having one such clerk should be capable of taking another at the same time, until the first should have served five years. It is in practice required that a proctor shall have been five years on the list of the thirty-four seniors before being allowed to take an articled clerk. There are two rules observed with respect to the qualification of articled clerks which are not contained in the annexed statute; one, by which the age of the clerk is required to be fourteen, and not above eighteen years; and the other, that such clerk should not have been a stipendiary writing-clerk. The above rule with respect to age has, under particular circumstances, been occasionally dispensed with by the judge. The date of and authority for these two rules are not known. [BARRISTER.]

The ordinances and decrees of Sir Richard Raines, Judge of the Prerogative Court, mentioned in the statute, as made in 1686, do not appear to have been registered. It is conceived that they must have been rules and regulations to be observed in the conduct of suits, and not to the articling of clerks on admission of proctors, which acts are done only before the Official Principal of the Arches Court, or his surrogate, and are registered in the Arches Court. (*Parliamentary Paper*, 327, Sess. 1844.)

In the session of 1844 a bill was brought into the House of Commons "For facilitating Appeals to the Court of Arches." The preamble stated that it "would tend to the saving of expense, and to the better administration of justice, if either litigant party in any contested suit in any Ecclesiastical Court, either in the province of Canterbury or in the province of York, had the right to remove such suit into the Arches Court of Canterbury." § 1 provided that all persons may (if they think fit) commence a suit in the Court of Arches, and that the Court of Arches shall have as full power and jurisdiction to proceed in and adjudicate upon such suit, and to decree final or interlocutory sentence, as if such suit had come before the Court of Arches by letters of request. § 4 provided that pro-

cess of the Court of Arches should extend to England and Wales; and § 5, that the Dean of Arches might order examination to be taken in India and the Colonies, as in 1 Geo. IV. c. 101. This bill, however, was not carried.

ARCHIVE, or ARCHIVES, a chamber or apartment where the public papers or records of a state or community are deposited: sometimes, by a common figure, applied to the papers themselves.

The word archive is ultimately derived from the Greek Ἀρχεῖον (*Archeion*). The Greek word *archeion* seems, in its primary signification, to mean "a council-house, or state-house," or "a body of public functionaries," as the Ephori at Sparta. (Aristotle, *Politic.* ii. 9; and Pausanias, iii. 11.) Others derive the word Archive from *arca*, "a chest," such being in early times a usual depository for records. So Isidorus, *Orig.* lib. xx. c. 9—"Archa dicta, quod arceat visum atque prohibeat. Hinc et archivum, hinc et arcanum, id est secretum, unde cæteri arcentur." "It is called Archa, because it does not allow (*arc*-eat) us to see what is in it. Hence also Archivum and Arcanum, that is, a thing kept secret, from which people are excluded (*arc*-entur)." This explanation is manifestly false and absurd.

The Greek word Archeion was introduced into the Latin language, to signify a place in which public instruments were deposited (*Dig.* 48, tit. 19, s. 9). The word Archiva, from which the French and English Archives is derived, is used by Tertullian (Facciol. *Lexic.* 'Archium et Archivum'); thus he speaks of the "Romana Archiva." The Latin word for Archeium is Tabularium.

Among the Romans, archives, in the sense of public documents (tabulæ publicæ), were deposited in temples. These documents were—leges, senatusconsulta, tabulæ censoriæ, registers of births and deaths, and other like matters. Registers of this kind were kept in the temples of the Nymphs, of Lucina, and others; but more particularly that of Saturn, in which also the public treasury was kept.

Among the early Christians churches were used for the same purposes. In England registers of births, deaths, and marriages were till recently (1837) kept in the parish churches, and were generally admissible as evidence of the facts to which they relate, though not originally intended for that purpose. Partial attempts at registration were made by the Dissenters, such as the registration of births kept at Dr. Williams' Library, Redcross-street. One-half of the parish registers anterior to A.D. 1600 had been lost at the period when the act for the registration of births, marriages, and deaths came into operation. By § 8 of this statute a register-office is required to be provided and upheld in each poor-law union in England and Wales, for the custody of the registers; and §§ 2 and 5 establish a central office in London. [REGISTRATION OF BIRTHS, &c.]

By § 65 of the Municipal Corporations Act (5 Wm. IV. c. 76) the custody of charters, deeds, muniments, and records of every borough shall be kept in such place as the council shall direct; and the town-clerk shall have the charge and custody of and be responsible for them.

Justinian's legislation made public documents judicial evidence. It is said that Charlemagne ordered the establishment of places for the custody of public documents. The church has usually been most careful in the preservation of all its papers, and accordingly such papers are the oldest that have been preserved in modern times. The importance of carefully preserving all documents that relate to transactions which affect the interests of the state and its component members is obvious; and next to the preservation of such documents, the most important thing is to arrange them well, and render them accessible, under proper regulations, to all persons who have occasion to use them. What has been done in this way in Germany is stated in the article 'Archive,' in the *Staats-Lexicon* of Rotteck and Welcker.

In England the word Archives is not used to indicate public documents. Such documents are called Charters, Muniments, Records, and State-papers. [RECORDS.]

AREO'PAGUS, COUNCIL OF, a council so called from the hill of that name, on which its sessions were held; it was also called the council above (ἡ ἄνω βουλή), to distinguish it from the Council

of Five Hundred, whose place of meeting was in a lower part of Athens, called the Ceramicus. Its high antiquity may be inferred from the legends respecting the causes brought before it in the mythical age of Greece, among which is that of Orestes, who was tried for the murder of his mother (Æschylus, *Eumen.*); but its authentic history commences with the age of Solon. There is indeed as early as the first Messenian war something like historical notice of its great fame, in the shape of a tradition preserved by Pausanias (iv. 51), that the Messenians were willing to commit the decision of a dispute between them and the Lacedæmonians, involving a case of murder, to the Areopagus. We are told that it was not mentioned by name in the laws of Dracon, though its existence in his time, as a court of justice, can be distinctly proved. (Plutarch, *Sol.* c. 19.) It seems that the name of the Areopagites was lost in that of the Ephetæ, who were then the appointed judges of all cases of homicide, as well in the court of Areopagus as in the other criminal courts. (Müller, *History of the Dorians*, vol. i. p. 352, English translation.) Solon, however, so completely reformed its constitution, that he received from many, or, as Plutarch says, from most authors, the title of its founder. It is therefore of the council of Areopagus, as constituted by Solon, that we shall first speak; and the subject possesses some interest from the light which it throws on the views and character of Solon as a legislator. It was composed of the archons of the year and of those who had borne the office of archon. The latter became members for life; but before their admission they were subjected, at the expiration of their annual magistracy, to a rigid scrutiny into their conduct in office and their morals in private life. Proof of criminal or unbecoming conduct was sufficient to exclude them in the first instance, and to expel them after admission. Various accounts are given of the number to which the Areopagites were limited. If there was any fixed number, it is plain that admission to the council was not a necessary consequence of honourable discharge from the scrutiny. But it is more probable that the accounts which limit the number are applicable only to an earlier period of its existence. (See the anonymous argument to the oration of Demosthenes against Androtion.) It may be proper to observe, that modern histories of this council do not commonly give the actual archons a seat in it. They are, however, placed there by Lysias the orator (*Areop.* p. 110, 16-20), and there is no reason to think that in this respect any change had been made in its constitution after the time of Solon. To the council thus constituted Solon intrusted a mixed jurisdiction and authority of great extent, judicial, political, and censorial. As a court of justice, it had direct cognizance of the more serious crimes, such as murder and arson. It exercised a certain control over the ordinary courts, and was the guardian generally of the laws and religion. It interfered, at least on some occasions, with the immediate administration of the government, and at all times inspected the conduct of the public functionaries. But, in the exercise of its duties as public censor for the preservation of order and decency, it was armed with inquisitorial powers to an almost unlimited extent.

It should be observed, that in the time of Solon, and by his regulations, the archons were chosen from the highest of the four classes into which he had divided the citizens. Of the archons so chosen, the council of Areopagus was formed. Here, then, was a permanent body, which possessed a general control over the state, composed of men of the highest rank, and doubtless in considerable proportion of Eupatridæ, or nobles by blood. The strength of the democracy lay in the *ecclesia*, or popular assembly, and in the ordinary courts of justice, of which the *dikasts*, or jurors, were taken indiscriminately from the general body of the citizens; and the council of Areopagus exercised authority directly or indirectly over both. The tendency of this institution to be a check on the popular part of that mixed government given by Solon to the Athenians, is noticed by Aristotle (*Polit.* ii. 9, and v. 3, ed. Schneid.). He speaks indeed of the council as being one of those institutions which Solon found and suffered to remain: but he can hardly

mean to deny what all authority proves, that in the shape in which it existed from the time of the legislator, it was his institution.

The council, from its restoration by Solon to the time of Pericles, seems to have remained untouched by any direct interference with its constitution. But during that interval two important changes were introduced in the general constitution of the state, which must have had some influence on the composition of the council, though we may not be able to trace their effects. The election of the chief magistrates by suffrage was exchanged for appointment by lot, and the highest offices of state were thrown open to the whole body of the people. But about the year B.C. 459, Pericles attacked the council itself, which never recovered from the blow which he inflicted upon it. All ancient authors agree in saying that a man called Ephialtes was his instrument in proposing the law by which his purpose was effected, but unfortunately we have no detailed account of his proceedings. Aristotle and Diodorus state generally that he abridged the authority of the council, and broke its power. (Aristotle, *Polit.* ii. 9; Diodorus, xi. 77.) Plutarch, who has told us more than others (*Cim.* c. 15; *Pericl.* c. 7), says only that he removed from its cognizance the greater part of those causes which had previously come before it in its judicial character, and that, by transferring the control over the ordinary courts of law immediately to the people, he subjected the state to an unmixed democracy. Little more than this can now be told, save from conjecture, in which modern compilers have rather liberally indulged. Among the causes withdrawn from its cognizance those of murder were not included; for Demosthenes states (*Contr. Aristocr.* p. 641-42), that none of the many revolutions which had occurred before his day had ventured to touch this part of its criminal jurisdiction. There is no reason to believe that it ever possessed, in matters of religion, such extensive authority as some have attributed to it, and there is at least no evidence that it lost at this time any portion of that which it had previously exercised. Lysias observes (*Areop.* p. 110, 46), that it was in his time charged especially with the preservation of the sacred olive-trees; and we are told elsewhere that it was the scourge of impiety. It possessed, also, long after the time of Pericles, in some measure at least the powers of the censorship. (Athenæus, 4, 64, ed. Dindorf.)

Pericles was struggling for power by the favour of the people, and it was his policy to relieve the democracy from the pressure of an adverse influence. By increasing the business of the popular courts, he at once conciliated his friends and strengthened their hands. The council possessed originally some authority in matters of finance, and the appropriation of the revenue; though Mr. Mitford and others, in saying that it controlled all issues from the public treasury, say perhaps more than they can prove. In later times the popular assembly reserved the full control of the revenue exclusively to itself, and the administration of it was committed to the popular council, the senate of five hundred. It seems that, at first, the Areopagites were invested with an irresponsible authority. Afterwards they were obliged, with all other public functionaries, to render an account of their administration to the people. (Æschines, *Contr. Ctes.* p. 56, 30.) Both these changes may, with some probability, be attributed to Pericles. After all, the council was allowed to retain a large portion of its former dignity and very extensive powers. The change operated by Pericles seems to have consisted principally in this: that, from having exercised independent and paramount authority, it was made subordinate to the ecclesia. The power which it continued to possess was delegated by the people, but it was bestowed in ample measure. Whatever may have been the effect of this change on the fortunes of the republic, it is probable that too much importance has been commonly attached to the agency of Pericles. He seems only to have accelerated what the irresistible course of things must soon have accomplished. It may be true that the unsteady course of the popular assembly required some check, which the democracy in its unmitigated form could not supply, but the existence

of an independent body in the state, such as the council of Areopagus as constituted by Solon, seems hardly to be consistent with the secure enjoyment of popular rights and public liberty; which the Athenian people, by their naval services in the Persian war, and the consequences of their success, had earned the right to possess and the power to obtain. It ought not, however, to be concluded that institutions unsuitable to an altered state of things were unskilfully framed by Solon, or that he surrounded the infancy of a free constitution with more restrictions than were necessary for its security. He may still deserve the reputation which he has gained of having laid the foundation of popular government at Athens.

With respect to the censorship, we can show, by a few instances of the mode in which it acted, that it could have been effectually operative only in a state of society from which the Athenians were fast emerging before the time of Pericles. The Areopagites paid domiciliary visits, for the purpose of checking extravagant housekeeping. (Athenæus, 6, 46.) They called on any citizen at their discretion to account for the employment of his time. (Plutarch, *Sol.* c. 23.) They summoned before their awful tribunal, and condemned, a boy for poking out the eyes of a quail. (Quintilian, *Instit. Orator.* 5, 9. 13.) They fixed a mark of disgrace on a man who had dined in a tavern. (Athenæus, 13, 21.) Athens, in the prosperity which she enjoyed during the last fifty years before the Peloponnesian war, might have tolerated the existence, but certainly not the general activity of such an inquisition.

It appears from the language of contemporary writers, that while there were any remains of public spirit and virtue in Athens the council was regarded with respect, appealed to with deference, and employed on the most important occasions (Lysias, *Contr. Theomnest.* p. 117, 12; *De Evandr.* p. 176, 17; *Andoc.* p. 11, 32; Demosthenes, *Contr. Aristocr.* p. 642-2.) In the time of Isocrates, when the scrutiny had ceased or become a dead letter, and profligacy of life was no bar to admission into the council, its moral influence was still such as to be an effectual restraint on the conduct of its own members. (Isocrates, *Areop.* p. 147.) In the corruption of manners and utter degradation of character which prevailed at Athens, after it fell under the domination of Macedonia, we are not surprised to find that the council partook of the character of the times, and that an Areopagite might be a mark for the finger of scorn. (Athenæus, 4, 64.) Under the Romans it retained at least some formal authority, and Cicero applied for and obtained a decree of the council, requesting Cratippus, the philosopher, to sojourn at Athens and instruct the youth. (Plutarch, *Cic.* c. 24.) It long after remained in existence, but the old qualifications for admission were neglected in the days of its degeneracy, nor is it easy to say what were substituted for them. Later times saw even a stranger to Athens among the Areopagites.

We shall conclude this article with a few words on the forms observed by the council in its proceedings as a court of justice in criminal cases. The court was held in an uninclosed space on the Areopagus, and in the open air; which custom, indeed, it had in common with all other courts in cases of murder, if we may trust the oration (*De Cæde Herodis*, p. 130) attributed to Antiphon. The Areopagites were in later times, according to Vitruvius, accommodated with the shelter of a roof. The prosecutor and defendant stood on two separate rude blocks of stone, and, before the pleadings commenced, were required each to take an oath with circumstances of peculiar solemnity: the former, that he charged the accused party justly; the defendant, that he was innocent of the charge. At a certain stage of the proceedings, the latter was allowed to withdraw his plea, with the penalty of banishment from his country. (Demosthenes, *Contr. Aristocr.* p. 642-3.) In their speeches both parties were restricted to a simple statement, and dry argument on the merits of the case, to the exclusion of all irrelevant matter, and of those various contrivances known under the general name of *paraskeue* (παρασκευή), to affect the passions of the judges, so shamelessly allowed and practised in the other courts. (Or. Lycurg. p. 149, 12-25; Lucian, *Gymn.* c. 19.) Of the existence

of the rule in question in this court, we have a remarkable proof in an apology of Lysias for an artful violation of it in his Areopagitic oration (p. 112, 5). Advocates were allowed, at least in later times, to both parties. Many commentators on the New Testament have placed St. Paul as a defendant at the bar of the Areopagus, on the strength of a passage in the Acts of the Aposties (xvii. 19). The apostle was indeed taken by the inquisitive Athenians to the hill, and there required to expound and defend his new doctrines for the entertainment of his auditors; but in the narrative of Luke there is no hint of an arraignment and trial.

Some of our readers may perhaps be surprised that we have made no mention of a practice so often quoted as peculiar to the Areopagites, that of holding their sessions in the darkness of night. The truth is, that we are not persuaded of the fact. It is, indeed, noticed more than once by Lucian, and perhaps by some other of the later writers; but it is not supported, we believe, by any sufficient authority, whilst there is strong presumptive evidence against the common opinion. It was, as it should seem, no unusual pastime with the Athenians to attend the trials on the Areopagus as spectators. (Lysias, *Contr. Theomn.* p. 117, 10.) We suspect that few of this light-hearted people would have gone at an unseasonable hour in the dark to hear such speeches as were there delivered, and see nothing. Perhaps there may be no better foundation for the story than there is for the notion, till lately so generally entertained, that the same gloomy custom was in use with the celebrated Vehmic tribunal of Westphalia.

ARISTO'CRACY, from the Greek *aristocrátia* (ἀριστοκρατία), according to its etymology, means a government of the *best* or *most excellent* (ἄριστοι). This name, which, like *optimates* in Latin, was applied to the educated and wealthy class in the state, soon lost its moral and obtained a purely political sense: so that aristocracy came to mean merely a government of a *few*, the rich being always the minority of a nation. When the sovereign power does not belong to one person, it is shared by a number of persons either greater or less than half the community: if this number is less than half, the government is called an *aristocracy*, if it is greater than half, the government is called a *democracy*. Since, however, women and children have in all ages and countries (except in cases of hereditary succession) been excluded from the exercise of the sovereign power, the number of persons enumerated in estimating the form of the government is confined to the adult males, and does not comprehend every individual of the society, like a census of population. Thus, if a nation contains 2,000,000 souls, of which 500,000 are adult males, if the sovereign power is lodged in a body consisting of 500 or 600 persons, the government is an aristocracy: if it is lodged in a body consisting of 400,000 persons, the government is a democracy, though this number is considerably less than half the entire population. It is also to be remarked, that where there is a class of subjects or slaves who are excluded from all political rights and all share in the sovereignty, the numbers of the domirant community are alone taken into the account in determining the name we are to give to the form of the government. Thus, Athens at the time of the Peloponnesian war had conquered a number of independent communities in the islands of the Ægean Sea and on the coasts of Asia Minor and Thrace, which were reduced to different degrees of subjection, but were all substantially dependent on the Athenians. Nevertheless, as every adult male Athenian citizen had a share in the sovereign power, the government of Athens was called not an aristocracy, but a democracy. Again, the Athenians had a class of slaves four or five times more numerous than the whole body of citizens of all ages and sexes; yet as a majority of the citizens possessed the sovereign power, the government was called a democracy. In like manner, the government of South Carolina in the United States of America is called a democracy, because every adult freeman, who is a native or has obtained the rights of citizenship by residence has a vote in the election of members of the

legislative assembly, although the number of the slaves in that state exceeds that of the free population.

An Aristocracy, therefore, may be defined to be a form of government in which the sovereign power is divided among a number of persons less than half the adult males of the *entire* community where there is not a class of subjects or slaves, or the *dominant* community where there is a class of subjects or slaves.

Sometimes the word aristocracy is used to signify not a form of government, but a class of persons in a state. In this sense it is applied not merely to the persons composing the sovereign body in a state of which the government is aristocratical, but to a class or political party in any state, whatever be the form of its government. When there is a privileged order of persons in a community having a title or civil dignity, and when no person, not belonging to this body, is admitted to share in the sovereign power, this class is often called the aristocracy, and the aristocratic party or class; and all persons not belonging to it are called the popular party, or, for shortness, the people. Under these circumstances many rich persons would not belong to the aristocratic class; but if a change takes place in the constitution of the state, by which the disabilities of the popular order are removed, and the rich obtain a large share of the sovereign power, then the rich become the aristocratic class, as opposed to the middle ranks and the poor. This may be illustrated by the history of Florence, in which state the *nobili popolani*, or popular nobles (as they were called), at one time were opposed to the aristocratic party, but by a change in the constitution became themselves the chiefs of the aristocratic, and the enemies of the popular party. In England, at the present time, aristocracy, as the name of a class, is generally applied to the *rich*, as opposed to the rest of the community: sometimes, however, it is used in a narrower sense, and is restricted to the *nobility*, or members of the peerage.

The word *aristocracy*, when used in this last sense, may be applied to an order of persons in states of any form of government. Thus, the privileged orders in France from the reign of Louis XIV. to the revolution of 1789, have often been called the aristocracy, although the government was during that time purely monarchical; so a class of persons has by many historians been termed the aristocracy in aristocratical republics, as Venice, and Rome before the admission of the plebeians to equal political rights: and in democratical republics, as Athens, Rome in later times, and France during a part of her revolution. It would therefore be an error if any person were to infer from the existence of an aristocracy (that is, an aristocratical class) in a state, that the form of government is therefore aristocratical, though in fact that might happen to be the case.

The use of the word *aristocracy* to signify a *class of persons* never occurs in the Greek writers, with whom it originated, nor (as far as we are aware) is it ever employed by Machiavelli and the revivers of political science since the middle ages: among modern writers of all parts of Europe this acceptation has, however, now become frequent and established.

There is scarcely any political term which has a more vague and fluctuating sense than *aristocracy*; and the historical or political student should be careful to watch with attention the variations in its meaning: observing, first, whether it means a form of government or a class of persons: if it means a form of government, whether the whole community is included, or whether there is also a class of subjects or slaves: if it means a class of persons, what is the principle which makes them a political party, or on what ground they are jointly opposed to other orders in the state. If attention is not paid to these points, there is great danger, in political or historical discussions, of confounding things essentially different, and of drawing parallels between governments, parties, and states of society, which resemble each other only in being called by the same name.

It has been lately proposed by Mr. Austin, in his work on 'The Province of Jurisprudence,' to use the term *aristocracy* as a general name for governments in which the sovereignty belongs to several persons, that is, to all governments which

are not monarchies. There would, however, be much inconvenience in deviating so widely from the established usage of words, as to make democracy a kind of aristocracy; and it appears that the word republic has properly the sense required, being a general term including both aristocracy and democracy, and signifying all governments which are not monarchies or despotisms. (*Journal of Education*, Part viii. p. 299; and REPUBLIC and DEMOCRACY.)

A'RMIGER. [ESQUIRE.]

ARMORIAL BEARINGS. [HERALDRY.]

ARMY. The word *army*, like many other military terms, has come to us from the French. They write it *armée*, "the armed," the "men in arms," which is precisely what the English word *army* means. An army is ill defined by Locke to be a collection of armed men obliged to obey one man. There are various definitions given by writers on the Law of Nations.

The word army is not used to designate a simple regiment or battalion, or any small body of armed men. An army is a large body of troops distributed in divisions and regiments, each under its own commander, and having officers of various descriptions to attend to all that is necessary to make the troops effective when in action. The whole body is under the direction of some one commander, who is called the commander-in-chief, the general, and sometimes the generalissimo, that is, the chief among the generals.

The whole military force of a nation constitutes its army, and it is usual to estimate the comparative strength of nations by the number of well-appointed men which they are able to bring into the field. In another sense, an army is a detachment from the whole collected force; a number of regiments sent forth on a particular expedition under the command of some one person who is the general for that especial purpose. Instances of this latter sense of the word occur in the expressions "Army of Italy," "the Army of Spain," &c., as formed by Napoleon. Such a detachment may be a large or a small army; and should it return with its ranks greatly thinned and without many of its officers, it would still be an army, if the distribution into divisions and regiments remained, though actually consisting of not more than a single regiment with its full complement of men and officers. In this state it is sometimes not unaptly called the skeleton of an army.

An army is the great instrument in the hands of the governments of modern Europe, by which, in the last extremity, they enforce obedience to the laws at home, and respect from other powers who show a disposition to do them wrong. When the efforts of the ministers of peace and justice at home are inadequate to enforce submission to the laws:—when the correspondence of cabinets and the conferences of ambassadors fail in composing disputes which arise among nations, the army is that power which is used to maintain order at home and rights abroad.

The legitimate purposes for which an army is maintained are essential to the well-being of a state, and every nation that has attained any high degree of civilization, has always maintained such a force, at least for protection and defence. But to have an army always appointed and always ready for the field can only be effected when the various other offices in a great community are properly distributed and filled. No better proof can be afforded of the high civilization of Egypt and other countries in early times than the well-appointed and powerful armies which they were able to bring into the field. This was effected in Egypt by having a particular caste or class of soldiers, corresponding pretty nearly to the Kshatriyas of India. (Herodotus, ii. 164, &c.) The armies of the Greeks, especially in the post-Alexandrine period, those of Carthage under the command of Hannibal, and the armies of Rome in the best days of the Republic and the Empire, were not inferior to any of modern times in numbers, appointments, discipline, or the military skill of their commanders. It is not, however, to them that we are to trace the origin or the history of our modern armies.

An army, meaning by that term a body of men distinct from the rest of the nation, constantly armed and disciplined, was unknown in the early periods of the English and the other modern European

nations. The whole male population was the army; that is, every person learned the use of arms, was ready to defend himself, his family, and his possessions; and in time of common danger, to go out to war under the command of some one chief chosen from among the heads of the tribes. Such were the vast armies which presented themselves from time to time on the Roman frontier, or contended against Cæsar when he was endeavouring to subjugate Gaul; and such was the power which, on so short a warning, was arrayed against him on the British coast under the command of Cassibelaunus, when he made that descent from which neither honour accrued to the Roman arms nor benefit to the Roman state. In all these nations the warlike spirit was kept up by the sense of danger, not so much from foreign invaders, as from neighbouring and kindred tribes.

In the writings of Cæsar and Tacitus, the two authors from whom we derive our best acquaintance with the manners of the Germanic and the Western nations of Europe, we see the warlike character of those nations, and the principles on which their military affairs were conducted. A whole male population trained to arms; confederating in time of common danger under some one chief; with little defensive armour, and no offensive weapons except darts, spears, and arrows; throwing up occasionally earth-works to strengthen a position—this is the outline of their military proceedings. (Tacitus, *Annal.* ii. 14.) There is little peculiar in the military system of the ancient Britons; yet it must have been by long practice that their warriors attained that degree of skill which they showed at the time of Cæsar's invasion.

When Britain was reduced to the form of a Roman province, a regular army was introduced and permanently settled in the island, for the purpose of enforcing submission, and of defence against foreign invaders. Many of the remains of Roman authority in Britain, as roads, walls, encampments, and inscriptions, are military. In that curious relic of Roman time, the 'Notitia,' which is referred to the age of the Roman emperors Arcadius and Honorius, we have a particular account of the distribution of the whole Roman army; and we see, in particular, how Britain was then divided for military purposes, and what were the fixed stations of particular portions of the Roman legions.

It was the policy of Rome, in the latter part of the Republic, and more particularly under the Empire, to recruit its legions from among the barbarous nations, but to employ such soldiers in countries to which they did not belong. Thus, in the inscriptions relating to military affairs which have been found in England, many tribes of Gaul, of Spain, and Portugal are named as those to which particular soldiers, or particular bodies of troops, belonged. And so in foreign inscriptions, the names of British tribes are sometimes found. The grounds of this policy are apparent. The military portion of these nations was thus drawn away. There remained only the quiet and the peaceable, or the females, the young, the infirm, and the aged. As long as the Roman army was sufficient for their protection, it was well. But when that army was withdrawn, we see, as in the case of Britain, that a people so weakened would easily fall a prey to nations which had never been subdued by the Roman arms; and we see also what was probably the true reason of the difference between the spirited resistance which was made to Cæsar on his two landings in Britain, and the clamorous complaint and feeble resistance with which the people of Britain met the Picts and the Saxons.

From this time we lose sight of any entire British population of the part of the island called England. The conquests made by the Saxons appear to have been complete, and their maxims of policy and war became the principles of English polity. They seem to have been at first in that state of society in which every man is a soldier; and the different sovereignties which they established were the occasion of innumerable contests. We have, however, little information on this subject; and even the supposed policy of Alfred, in the separation of a portion of the people for military affairs, in the form of a national militia, is a part of his history on which we have not any very satisfactory information.

We find, however, that the Saxon kings had powerful armies at their command; and the most probable account of the mode in which they were got together seems to be this:—the male population were exercised in military duties, under the inspection of the earls, and their deputies, the sheriffs, or vicecomites, in the manner of the arrays and musters of later times—being drawn out occasionally for the purpose, and being thus ready to form, at any time when their services were required, an efficient force.

We see from that curious remain of those times, a piece of needle-work representing the wars and death of Harold, that the Saxon soldiers were not those half-clothed and painted figures which had presented themselves on the shores of Britain when the Roman armies made their first descent. We see them clothed from head to foot in a close-fitting dress of mail. They have cavalry, but no chariots. The archers are all infantry. Both infantry and cavalry are armed with spears, to some of which little pennons are attached. Some have swords, and others carry bills or battle-axes. They have shields, the bosses on which are surrounded with flourishes and other ornaments; and there are sometimes other devices, but nothing which can be regarded as more than the very rudiments of those heraldic devices which were afterwards formed into a kind of system by the heralds who attended the armies, and by which the chiefs were distinguished from each other, when their persons were concealed by the armour. The piece of needle-work representing the wars of Harold is supposed to be the work of Matilda, the queen of William the Conqueror, and the ladies of her court. It is preserved in the cathedral of Bayeux, whence it is commonly called the Bayeux tapestry. One of the many valuable services rendered to historical literature by the Society of Antiquaries has been the publication of a series of coloured prints, in which we have, on a reduced scale, a perfectly accurate representation of this singular monument of ancient English and Norman manners.

A great change took place in the military system of England at the Conquest. It is to that period that the introduction of fiefs is to be referred, a system which provided, among other things, for an army ever ready at the call of the sovereign lord. The king, reserving certain tracts as his own demesne, distributed the greater portion of England among his followers, to hold by military service; that is, for every knight's fee, as they were called, the tenant was bound to find the king one soldier ready for the field, to serve him for forty days in each year. The extent of the knight's fee varied with the qualities and value of the soil. In the reign of Edward I. the annual value in money was 20*l.* The number of knights' fees is said by old writers to have been 60,060. The king had thus provision made for an army of 60,000 men, whom he could call at short notice into the field, subject them when there to all the regulations of military discipline, and keep them for forty days without pay, which was usually as long as their service would be required in the warfare in which the king was likely to be engaged. When their services were required for any longer time, they might continue on receiving pay.

Writs of military summons are found in great abundance in what are called the "Close Rolls," which contain copies of such letters as the king issues under seal. But this system, it is evident, had many inconveniences; and the kings of England had a better security for the protection of the realm against invasion, and for the maintenance of internal tranquillity, in that which seems to be a relic of Saxon polity. We allude to the liability of all persons to be called upon for military service within the realm; to the power which the constitution gave to the sheriff to call them out to exercise, in order that they might be in a condition to perform the duty when called upon; and to the obligation which a statute of Edward I. imposed on all persons to provide themselves with certain pieces of armour, which were changed for others by a statute of James I. We see in this system at once the practice of our remoter ancestors, and the beginning of that drafting of men to form the county militia, which is a part of the military polity of the country at present.

The sheriffs were the persons to whom the care of these affairs was committed; but it was the practice of the early kings to send down into the several shires, or to select from the gentry residing in them, persons whose duty it was to attend the musters or arrays, which were a species of review of these domestic troops, and who were intended, as it seems, to be a check upon the sheriffs in the discharge of this part of their duty. The persons thus employed were usually men experienced in military affairs; and when the practice became more general, there was a permanent officer appointed in each county, who had the superintendence of these operations, and was called the lieutenant: this is the origin of the present lord-lieutenant of counties, an officer who cannot be traced to a period earlier than the reign of Henry VIII.

Foreigners were also sometimes engaged to serve the king in his wars; but these were purely mercenary troops, and were paid out of the king's own revenues.

We see, then, that the early kings of England of the Norman and Plantagenet races had three distinct means to which they could have recourse when it was necessary to arm for the general defence of the realm: the quota of men which the holders of the knights' fees were bound to furnish; the posse-comitatûs, or whole population, from sixteen to sixty, of each shire, under the guidance of the sheriffs; and such hired troops as they might think proper to engage. But as the posse-comitatûs could not be compelled to leave the kingdom, and only in particular cases the shire to which they belonged, the king had only his feudal and mercenary troops at command when he carried an army to the continent, or when he had to wage war against even the Scotch or Welsh. We are not to suppose that troops so levied, especially when there were only contracted pecuniary resources for the hiring of disciplined troops of other nations, would have been sufficient to make head against the power of such a potentate as the king of France, and once to gain possession of that throne. And this leads us to another important part of the subject.

The mutual inconveniences attendant on the nature of the military services due from those who held the feudal tenures of the crown disposed both parties to consent to frequent commutations. Money was rendered instead of service, and thus the crown acquired a revenue which was applicable to military purposes, and which was expended in the hire of native-born subjects to perform service in the king's armies in particular places and for particular terms. The king covenanted by indenture with various persons, chiefly those of most importance in the country, to serve him on certain money-terms with a certain number of followers, and in certain determinate expeditions. There appears little essential difference between this and the modern practice of recruiting armies. It was chiefly by troops thus collected that the victories of Creci, Poictiers, and Agincourt were gained.

In the office of the Clerk of the Pells in the Exchequer, Dugdale perused numerous indentures of this kind, and he has made great use of them in the history which he published of the Baronage of England. A few extracts from that work will show something of the nature of these engagements.

Michael Poynings, who was at the battle of Creci, entered into a contract with King Edward III. to serve him with fifteen men-at-arms, four knights, ten esquires, and twelve archers, having an allowance of twenty-one sacks of the king's wool for his and their wages. Three years after the battle of Creci, King Edward engaged Sir Thomas Ughtred to serve him in his wars beyond sea, with twenty men-at-arms and twenty archers on horseback, taking after the rate of 200*l.* per annum for his wages during the continuance of the war. In the second year of King Henry IV., Sir William Willoughby was retained to attend the king in his expedition into Scotland, with three knights besides himself, twenty-seven men-at-arms, and one hundred and sixty-nine archers, and to continue with him from June 20th to the 13th of September. When Henry V. had determined to lead an army into France, John Holland was retained to serve the king in his "voyage royal" into France for one whole year, with forty

men-at-arms and one hundred archers, whereof the third part were to be footmen, and to take shipping at Southampton on the 10th of May next following. In the 12th of Henry VII., John Grey was retained to serve the king in his wars in Scotland, under the command of Giles, Lord Daubeney, captain-general of the king's army for that expedition; with one lance, four demi-lances, and fifty bows and bills, for two hundred and ninety miles; with one lance, four demi-lances, and fifty bows and bills, for two hundred and sixty-six miles; and with two lances, eight demi-lances, and two hundred bows and bills, for two hundred miles. These were nearly half what is now the usual complement of a regiment.

Troops thus levied, together with foreign mercenaries, make the nearest approach that can be discovered in English history to a permanent, or, as it is technically called, a standing army. The king might, to the extent of his revenue, form an army of this description: but as to the other means of military defence or offence put into his hands, the persons engaged were only called into military service on temporary occasions, and soon fell back again into the condition of the citizen or agriculturist. But the king's power was necessarily limited by his revenue, and the maintenance of a permanent force appears to have been little regarded by our early kings, since, before the reign of King Henry VII. it does not appear that the kings had even a body-guard, much less any considerable number of troops accoutred and ready for immediate action at the call of the king. In modern times, Charles VII. of France (1423-1461) first introduced standing armies in Europe: this policy was gradually imitated by the other European states, and is now a matter of necessity and of self-defence. In England, probably in a great degree owing to her insular situation, this took place later than in most continental countries. Still the example of the continental states, a sense of the great convenience of having always a body of troops at command, and the change in the mode of warfare effected by the introduction of artillery, which brought military operations within the range of science, and made them more than before matters which required much time and study in those who had to undertake the direction of any large body of men, led to the establishment of a permanent army, varying in numbers with the dangers and necessities of the time.

The few troops who formed the royal guard were the only permanent soldiers in England before the civil wars. The dispute between Charles I. and his parliament was about the command of the militia. Charles II. kept up about 5000 regular troops as guards, and to serve in the garrisons which then were established in England. These were paid out of the king's own revenue. James II. increased them to 30,000; but the measure was looked on with great jealousy, and the object was supposed to be the destruction of the liberties of Englishmen. In the Bill of Rights (1689) it was declared that the raising or keeping a standing army within the kingdom, in time of peace, unless it be with consent of parliament, is against law. An army varying in its numbers has ever since been maintained, and is now looked on without apprehension. It is raised by the authority of the king and paid by him: but there is an important constitutional check on this part of the royal prerogative in the necessity for acts of parliament to be passed yearly, in order to provide the pay and to maintain the discipline. [MUTINY ACT.]

ARMIES. [MILITARY FORCE.]

ARRAIGNMENT. This word is derived by Sir Matthew Hale from *arraisoner, ad rationem ponere*, to call to account or answer, which, in ancient law French, would be *ad-resoner*, or, abbreviated, *a-resner*. Conformably to this etymology, arraignment means nothing more than calling a person accused to the bar of a court of criminal judicature to answer formally to a charge made against him. The whole proceeding at present consists in calling upon the prisoner by his name, reading over to him the indictment upon which he is charged, and demanding of him whether he is guilty or not guilty. Until very lately, if the person accused pleaded that he was not guilty, he was asked how he would be tried; to which

question the usual answer was, "By God and my country." But by a late statute (7 & 8 Geo. IV. c. 28, sec. 1) this form was abolished; and it was enacted, that "if any person, not having privilege of peerage, being arraigned upon an indictment for treason, felony, or piracy, shall plead 'Not guilty,' he shall, without any further form, be deemed to have put himself upon the country for trial, and the court shall, in the usual manner, order a jury for the trial of such person accordingly."

The arraignment of a prisoner is founded upon the plain principle of justice, that an accused person should be called upon for his answer to a charge before he is tried or punished for it. That this was a necessary form in English criminal law at a very early period appears from the reversal in parliament of the judgment given against the Mortimers in the reign of Edward II., which Sir Matthew Hale calls an "excellent record." One of the errors assigned in that judgment, and upon which its reversal was founded, was as follows:—"That if in this realm any subject of the king hath offended against the king or any other person, by reason of which offence he may lose life or limb, and be thereupon brought before the justices for judgment, he ought to be called to account (*poni rationi*), and his answers to the charge to be heard before proceeding to judgment against him; whereas in this record and proceedings it is contained that the prisoners were adjudged to be drawn and hanged, without having been arraigned (*arrenati*) thereupon, or having an opportunity of answering to the charges made against them, contrary to the law and custom of this realm." (Hale's *Pleas of the Crown*, book ii. c. 28.)

The ceremony of the prisoner holding up his hand upon arraignment is merely adopted for the purpose of pointing out to the court the person who is called upon to plead. As it is usual to place several prisoners at the bar at the same time, it is obviously a convenient mode of directing the eyes of the court to the individual who is addressed by the officer. In the case of Lord Stafford, who was tried for high treason in 1680, on the charge of being concerned in the Popish plot, the prisoner objected, in arrest of judgment, that he had not been called on to hold up his hand on his arraignment; but the judges declared the omission of this form to be no objection to the validity of the trial. (Howell's *State Trials*, vol. vii. p. 1555.)

ARREST, PERSONAL. [DEBT.]

ARRESTMENT in the law of Scotland is a process by which a creditor may attach money or moveable property which a third party holds for behoof of his debtor. It bears a general resemblance to foreign attachment by the custom of London. [ATTACHMENT.] The person who uses it is called the arrestor; he in whose hands it is used is called the arrestee, and the debtor is called the common debtor. It is of two kinds, arrestment in execution and arrestment in security. The former can proceed only on the decree of a court, on a deed which contains a clause of registration for execution, or on one of those documents, such as bills of exchange and promissory notes, which by the practice of Scotland are placed in the same position as deeds having a clause of registration. Arrestment in security is generally an incidental procedure in an action for the constitution of a debt; but it may be obtained from the Bill Chamber of the Court of Session on cause shown, as a method of constituting a security for a debt not yet due. This latter class of arrestments is under the equitable control of the judge who issues it; and it is a general principle that it cannot be obtained unless the claimant show that circumstances have occurred which have a tendency to make his chance of payment less than it was at the time when he entered into the engagement with his debtor. An arrestment may be recalled on it being shown that it should not have been issued, and an arrestment in security may be "loosed" on the debtor finding security for the payment of his debt. An arrestment in execution expires on the lapse of three years from the date of its execution, and an arrestment in security, on the lapse of three years from the day when the debt becomes due. In the meantime, the person in whose hands the process is used, is liable in damages if he part with the property

arrested, but it cannot be attached after he has parted with it, in the hands of a *bonâ-fide* holder. The arrestment is made effectual for the payment of the debt by an action of Forthcoming, in which the common debtor is cited. It concludes for payment of the money if the arrestment be laid on money, or for their sale for behoof of the creditor if it be laid on other moveable goods. The arrestee may plead against the arrestor whatever defence he might have had against the common debtor. The authority of the local courts was enlarged in regard to arrestments, and the process was generally regulated, by the 1 & 2 Vict. c. 114. The practice on this subject will be found in Darling's 'Powers and Duties of Messengers-at-Arms.'

ARSON. [MALICIOUS INJURIES.]

ARTICLES OF WAR. [MUTINY ACT.]

ASSENT, ROYAL. When a bill has passed through all its stages in both houses of parliament, if it is a money bill, it is sent back to the charge of the officers of the House of Commons, in which it had of course originated; but if not a bill of supply, it remains in the custody of the clerk of the enrolments in the House of Lords. The royal assent is always given in the House of Lords, the Commons, however, being also present at the bar, to which they are summoned by the Black Rod. The king may either be present in person, or may signify his assent by letters patent under the great seal, signed with his hand, and communicated to the two houses by commissioners. Power to do this is given by 33 Henry VIII. chap. 21. The commissioners are usually three or four of the great officers of state. They take their seats, attired in a peculiar costume, on a bench placed between the woolsack and the throne. When the king comes in person, the clerk assistant of the parliament waits upon his Majesty in the robing-room before he enters the house, reads a list of the bills, and receives his commands upon them. During the progress of a session, the royal assent is usually given by a commission under the great seal issued for that purpose. In strict compliance with 33 Henry VIII. c. 21, the commission is "by the king himself signed with his own hand," and attested by the clerk of the crown in Chancery. During the last illness of George IV. an act was passed to appoint one or more person or persons, or any one of them, to affix in the king's presence, and by his Majesty's command given by word of mouth, his Majesty's signature by means of a stamp. When the king comes down in person, he is seated on the throne, robed and crowned. The royal assent is rarely given in person, except at the end of a session; but bills for making provision for the honour and dignity of the crown, such as settling the bills for the civil lists, have generally been assented to by the king in person immediately after they have passed both houses. When the bill for supporting the dignity of Queen Adelaide received the royal assent in the usual form, in August, 1836, she was present, attended by one of the ladies of the bed-chamber and her maids of honour, and sat in a chair placed on a platform raised for that purpose. After the royal assent was pronounced, the queen stood up and made three curtesies, one to the king, one to the lords, and one to the commons. The bills that have been left in the House of Lords lie on the table; the bills of supply are brought up from the Commons by the Speaker, who, in presenting them, especially at the end of a session, is accustomed to accompany the act with a short speech. In these addresses it is usual to recommend that the money which has been so liberally supplied by his Majesty's faithful Commons should be judiciously and economically expended; and a considerable sensation has been sometimes made by the emphasis and solemnity with which this advice has been enforced upon the royal ear. The royal assent to each bill is announced by the clerk of the parliaments. "When her Majesty gives her assent to bills in person, the clerk of the crown reads the titles, and the clerk of the parliament makes an obeisance to the throne, and then signifies her Majesty's assent. A gentle inclination, indicative of assent, is given by her Majesty, who has already given her commands to the clerk assistant." (May's *Law, &c. of Parliament.*)

After the title of the bills is read by the clerk of the crown, the clerk of the parliament says, if it is a bill of supply, which receives the royal assent before all other bills, "*Le roi* (or *la reyne*) *remercie ses bons sujets, accepte leur benevolence, et ainsi le veult;*" if any other public bill, "*Le roi le veult;*" if a private bill, "*Soit fait comme il est desirée.*" In an act of grace or pardon, which has the royal assent before it is laid before parliament, where it is only read once in each house, and where, although it may be rejected, it cannot be amended, there is no further expression of the royal assent, but, having read its title, the clerk of the parliament says, "*Les Prelats, Seigneurs, et Communes, en ce present parliament assemblées, au nom de touts vos autres sujets, remercient très humblement vostre majesté, et prient à Dieu vous donner en santé bonne vie et longue.*"

When the royal assent is refused to a bill, the form of announcement is *Le roi s'avisera.* It is probable that in former times these words were intended to mean what they express, namely, that the king would take the matter into consideration, and merely postponed his decision for the present; but the necessity of refusing a bill is removed by the constitutional principle that the crown has no will except that of its ministers, who only retain their situations so long as they enjoy the confidence of parliament. There has been no instance of the rejection by the crown of any bill, certainly not of any public bill, which had passed through parliament, for many years. It is commonly stated, even in books of good authority (for instance, in Chitty's edition of Blackstone), that the last instance was the rejection of the bill for triennial parliaments by William III. in 1693. Tindal, in his continuation of Rapin, says, "The king let the bill lie on the table for some time, so that men's eyes and expectations were much fixed on the issue of it; but in conclusion he refused to pass it, so the session ended in an ill humour. The rejecting a bill, though an unquestionable right of the crown, has been so seldom practised, that the two houses are apt to think it a hardship when there is a bill denied." But another instance occurred towards the close of the same year, which was more remarkable, in consequence of its being followed by certain proceedings in parliament, which was sitting at the time. This was the rejection of the bill commonly called the Place Bill, the object of which was to exclude all holders of offices of trust and profit under the crown from the House of Commons. It was presented to the king along with the Land-tax Bill; and the day after he had assented to the one and rejected the other, the House of Commons, having resolved itself into a grand committee on the state of the nation, passed the following resolution:—"That whoever advised the king not to give the royal assent to the act which was to redress a grievance, and take off a scandal upon the proceedings of the Commons in parliament, is an enemy to their majesties and the kingdom; and that a representation be made to the king, to lay before him how few instances have been in former reigns of denying the royal assent to bills for redress of grievances; and the grief of the Commons for his not having given the royal assent to several public bills, and in particular to this bill, which tends so much to the clearing the reputation of this house, after their having so freely voted to supply the public occasions." An address conformable to the resolution was accordingly presented to his Majesty by the whole house. The king returned a polite answer to so much of the address as referred to the confidence that ought to be preserved between himself and the parliament, but took no notice of what was said about the rejection of the bill. When the Commons returned from the royal presence, it was moved in the house "That application be made to his Majesty for a further answer;" but the motion was negatived by a majority of 229 to 28.

Mr. Hatsell, in the second volume of his Precedents (edition of 1818), quotes other instances of subsequent date to this. The latest which he discovered was the rejection of a Scotch militia bill by Queen Anne in 1707; and this is also the latest mentioned in Mr. May's recent work. In former times the refusal of the royal

assent was a common occurrence. Queen Elizabeth once at the end of a session, out of ninety-one bills which were presented to her, rejected forty-eight.

It is the royal assent which makes a bill an act of parliament, and gives it the force of a law. As by a legal fiction the laws passed throughout a whole session of parliament are considered as forming properly only one statute (of which what are popularly called the separate acts are only so many chapters), it used to be a matter of doubt whether the royal assent, at whatever period of the session it might be given, did not make the act operative from the beginning of the session, when no day was particularly mentioned in the body of it as that on which it should come into effect. In order to settle this point, it was ordered by 33 George III. c. 13, that the clerk of parliament should for the future endorse on every bill the day on which it received the royal assent, and that from that day, if there was not in it any specification to the contrary, its operation should commence.

It appears that the several forms of words now in use are not, as has been sometimes stated, exactly the same that have been employed in this ceremony from the first institution of parliaments. For instance, it is recorded that Henry VII. gave his assent to the bill of attainder passed in the first year of his reign (1485) against the partisans of Richard III. in the more emphatic terms, *Le roy le voet, en toutz pointz.* On some occasions, of earlier date, the assent is stated to have been given in English. Thus, to a bill of attainder passed against Sir William Oldhall in 1453 (the 31st of Henry VI.), the clerk is recorded in the Rolls of Parliament to have announced his Majesty's assent as follows: "The king volle that it be hadde and doon in maner and forme as it is desired." And in 1459, in the case of an act of attainder against the Duke of York, the Earls of Salisbury, Warwick, and others, the same king gave his assent in the following form:—"The king agreeth to this act, so that by virtue thereof he be not put from his prerogative to show such mercy and grace as shall please his highness, according to his regalie and dignitie, to any person or persons whose names be expressed in this act, or to any other that might be hurt by the same."

In the time of the Commonwealth, an English form was substituted for those in Norman-French, which had been previously and are now in use. On the 1st of October, 1656, the House of Commons resolved "that when the Lord Protector shall pass a bill, the form of words to be used shall be these, *The Lord Protector doth consent.*" In 1706, also, a bill passed the House of Lords, and was read a second time in the House of Commons, for abolishing the use of the French tongue in all proceedings in parliament and courts of justice, in which it was directed, "that instead of *Le roy le veult*, these words be used, *The king answers Be it so;* instead of *Soit fait comme il est desirée*, these words be substituted, *Be it as is prayed;* where these words, *Le roi remercie ses bons sujets, accepte leur benevolence, et ainsi le veult*, have been used, it shall hereafter be, *The king thanks his good subjects, accepts their benevolence, and answers Be it so;* instead of *Le roi s'avisera*, these words, *The king will consider of it*, be used." "Why this bill was rejected by the Commons," says Hatsell, "or why its provisions with respect to proceedings in parliament were not adopted in an act which afterwards passed in the year 1731, 'That all proceedings in courts of justice should be in English,' I never heard any reason assigned." For further information on this subject, see Hatsell's Precedents, especially vol. ii. pp. 338-351 (edition of 1818); also May's *Treatise upon the Law, Privileges, Proceedings, and Usage of Parliament*, 1844.

ASSEMBLY, GENERAL, OF SCOTLAND. [GENERAL ASSEMBLY.]

ASSEMBLY, NATIONAL. [STATES-GENERAL.]

ASSEMBLY OF DIVINES. [WESTMINSTER ASSEMBLY.]

ASSESSED TAXES. [TAXES.]

ASSESSOR. The word assessor is Latin (ad-sessor), and signifies one who sits by the side of another. An assessor was one who was learned in the law, and sat by a magistrate or other functionary,

such as the governor of a province (Præses), to aid him in the discharge of the judicial duties of his office. It is stated in the *Digest*, i. tit. 22, "De Officio Assessorum," "that all the duties of assessors, by which the learned in the law discharge their functions, lie pretty nearly in the following matters: cognitiones, postulationes, libelli, edicta, decreta, Epistolæ." The Latin words are here retained, because they cannot be correctly rendered by single equivalents in English. This passage shows that they were persons acquainted with the law, who aided in the discharge of their duties those functionaries who required such assistance. A work of the learned Jurist Sabinus is referred to by Ulpian (*Dig.* 47, tit. 10, i. 5), which appears from the title to have treated of the duties of assessors. An instance is mentioned in Suetonius (*Galba*, 14) of a man being raised from the office of assessor to the high dignity of Præfectus Prætorii. The Emperor Alexander Severus gave the assessors a salary. (Lampridius, *Alex. Severus*, 46.) In the later empire assessors were also called Conciliarii, Juris studiosi, and Comites. It is conjectured by Savigny (*Geschichte des Röm. Rechts im Mittelalter*, i. 79) that as the old forms of procedure gradually fell into disuse, the assessors took the place of the judices; or in other words, became Judices. Originally the assessor did not pronounce a sentence; this was done by the magistrate or person who presided. (See the passage in Seneca, *De Tranquill.* c. 3.)

Two officers called assessors are elected by the burgesses in all municipal boroughs, annually on the 1st of March. The qualifications are the same as those of a councillor; but actual members of the council, the town-clerk, and treasurer are ineligible. In corporate towns divided into wards, two assessors are elected for each ward. The duty of the assessors is to revise the burgess lists in conjunction with the mayor, to be present at the election of councillors, and to ascertain the result of elections. (5 & 6 Will. IV. c. 76.) The word assessor is not usually applied in this country to those whose duty it is to assess the value of property for local or public taxation. This is usually done by a "surveyor," who adds this duty incidentally to his general private business. Under the Insolvent Act (7 & 8 Vict. c. 96) an assessor may be appointed for inferior courts, who has power to award imprisonment in cases of fraudulent debts.

ASSESSOR. In Scotland the magistrates of corporate burghs who exercise judicial powers, generally employ some professional lawyer to act as their assessor. It is his duty to see that the proper judicial control is exercised over the preparation of the pleadings, and to make out drafts of the judgments.

ASSETS (from the Norman French *assetz*, sufficient) is the real and personal property of a party deceased, which, either in the hands of his heir or devisee, or of his executor or administrator, is chargeable with the payment of his debts and legacies. Assets are either *personal* or *real*. Personal assets comprehend goods, chattels, debts, and devolve on the executor or administrator; and assets (including all real estate) descend to the heir-at-law, or are devised to the devisee of the testator. Assets are also distinguishable into *legal*, or such as render the executor or heir liable to a suit at common law on the part of a creditor, and *equitable*, or such as can only be rendered available by a suit in a court of equity, and are subject to distribution and marshalling among creditors and legatees, according to the equitable rules of that court.

ASSIENTO TREATY; in Spanish, EL ASIENTO DE LOS NEGROS, and EL PACTO or TRATADO DEL ASIENTO, that is, the compact for the farming, or supply, of negroes. It is plain that the word *Assiento*, though occasionally signifying an assent or agreement, cannot, as is sometimes stated, have that meaning in this expression. Spain, having little or no intercourse with those parts of Africa from which slaves were obtained, used formerly to contract with some other nation that had establishments on the western coast of that continent for the supply of its South American possessions with negroes. Such treaties were made first with Portugal, and afterwards with France, each of which countries, in consideration of enjoying a monopoly of the supply of negroes to the South Ame-

rican dominions of Spain, agreed to pay to that crown a certain sum for each negro imported. In both cases the Assiento was taken by a commercial association in France—by the Guinea Company, which thereupon took the name of the Assiento Company (Compagnie de l'Assiente). Both the Portuguese company and the French were ruined by their contract. At the peace of Utrecht, in 1713, the Assiento, which the French had held since 1702, was transferred to the English for a period of thirty years. In addition to the exclusive right of importing negroes, the new holders of the contract obtained the privilege of sending every year a ship of 500 (afterwards raised to 600) tons to Spanish America, with goods to be entered and disposed of on payment of the same duties which were exacted from Spanish subjects; the crown of Spain, however, reserving to itself one-fourth of the profits, and five per cent. on the remaining three-fourths. The contract was given by Queen Anne to the South Sea Company, which, however, is understood to have made nothing by it, although it was calculated that there was a profit of cent. per cent. upon the goods imported in the annual ship, which usually amounted in value to about 300,000*l.* So much of this sum as fell to the share of the Company was either counterbalanced by the loss attendant on the supply of the 4800 negroes which they were bound to provide every year, or went chiefly into the pockets of their South American agents, many of whom in a few years made large fortunes. The war which broke out in 1739 stopped the further performance of this contract when there were still four years of it to run; and at the peace of Aix-la-Chapelle, in 1748, the claim of England to this remainder of the privilege was given up. Spain indeed complained, and probably with justice, that the greatest frauds had been all along committed under the provision of the treaty which allowed the contractors to send a shipload of goods every year to South America. It was alleged that the single ship was made the means of introducing into the American markets a quantity of goods amounting to several times her own cargo. The public feeling in Spain had been so strongly excited on the subject of this abuse, that it would have been very difficult to obtain the consent of that country to a renewal of the treaty.

ASSIGNAT. One of the earliest financial measures of the Constituent Assembly, in the French revolution, was to appropriate to national purposes the landed property of the clergy, which, upon the proposition of Mirabeau, was, by a large majority, declared to be at the disposition of the state. (Thiers, *Histoire de la Révolution Française*, vol. i. p. 194, 2nd ed.) Shortly afterwards, the assembly, desirous to profit by this measure, decreed the sale of lands belonging to the crown and the clergy to the amount of 400 millions of francs, or about sixteen millions sterling (Ib. p. 212). To sell at once so large a portion of the surface of France, without lowering the price of land by overloading the market to such an unexampled extent (Thiers, vol. vii. p. 377), and moreover in a time of mistrust, insecurity, rapid political change, and almost of civil war, was an object of no very easy attainment. It was first proposed that the lands should be transferred to the municipalities, which, not being provided with ready money, might give the state a bond or security for the price, and the state would pay its creditors with these securities, which could, in process of time, be realised, as the municipalities were able successively to sell, at an advantageous price, the lands thus made over to them. The holders of the securities would thus have a claim not on the government, but on the municipal bodies, which would be compellable by process of law to pay; and the creditor might moreover extinguish the debt by buying the lands when put up to sale, and by offering the security in payment. But it might happen that the holder of such securities would be unable to realise them, and might not be willing to purchase any of the lands of the state: in order, therefore, to obviate this objection to the securities in question, it was proposed that they should be transferable and be made a legal tender.

There was also another motive for the adoption of this latter expedient. In con-

sequence of the want of confidence and stagnation of trade which prevailed in France at this time, money had become extremely scarce, and much of the current coin had been withdrawn from circulation; the king and queen had even been forced to send their plate to the mint. (Thiers, vol. i. p. 100.) Under these circumstances it was determined to issue a paper-money, based on the security of the unsold lands belonging to the state. The notes thus issued (each of which was for 100 francs, equal to 4*l.*) were called *assignats*, as representing land which might be transferred or *assigned* to the holder; and all notes which came back in this manner to the government in payment for national lands were to be cancelled. They moreover bore an interest by the day, like English Exchequer-bills. The object of this measure was, therefore, to obtain the full value of the confiscated lands of the clergy (which in the actual state of France was impossible), and to supply the deficiency of coin in the circulation (arising from a feeling of insecurity) by a forced issue of inconvertible paper-money, which, as was predicted by M. de Talleyrand, the Bishop of Autun, would inevitably be depreciated, and cause misery and ruin to the holders of it. (Thiers, vol. i. p. 233-7, and note xviii. p. 382.) The first issue of assignats was to the amount of 400 millions, bearing interest: shortly afterwards 800 millions in addition were issued, but without the liability to pay interest (Ib. p. 256). The last of these issues was made in September, 1790. But as, in the beginning of the following year, the Legislative Assembly sequestered the property of all the emigrants, a numerous and wealthy class, for the benefit of the state (Thiers, vol. ii. p. 51), it was thought that the amount of the national securities having been increased, the issues might be safely increased likewise: accordingly, in September, 1792, although 2500 millions had been already issued, a fresh issue, to the amount of 200 millions, was ordered by the Convention. (Thiers, vol. iii. p. 151.) Towards the end of this year, the double effects of the general insecurity of property and person, and of the depreciation of assignats caused by their over-issue, was felt in the high price of corn, and the unwillingness of the farmers to supply the markets with provisions. Wholly mistaking the causes of this evil, the violent revolutionary party clamoured for an assize, or fixed maximum of prices, and severe penalties against *accapareurs*, or engrossers, in order to check the avarice and unjust gains of the rich farmers. The Convention, however, though pressed both by factious violence and open insurrection, refused at this time to regulate prices by law. (Thiers, vol. iii. p. 311-7.) Prices, however, as was natural, still continued to rise; and although corn and other necessaries of life were to be had, their value, as represented in the depreciated paper currency, had been nearly doubled: the washerwomen of Paris came to the Convention to complain that the price of soap, which had formerly been 14 sous, had now risen to 30. On the other hand, the wages of labour had not risen in a corresponding degree (see Senior on *Some Effects of Government Paper*, p. 81): so that the evils arising from the depreciation of the assignats greatly aggravated the poverty and scarcity which would under any circumstances have been consequent on the troubles and insecurity of a revolution. The labouring classes accused the rich, the engrossers, and the aristocrats, of the evils which they were suffering, and demanded the imposition of a maximum of prices. Not only, however, in the Convention did the most violent democrats declare loudly against a maximum, but even in the more popular assembly of the Commune, and the still more democratic club of the Jacobins, was this measure condemned, frequently amidst the yells and hisses of the galleries. As the Convention refused to give way, Marat in his newspaper recommended the pillage of the shops as a means of lowering prices—a measure immediately adopted by the mob of Paris, who began by insisting to have goods at certain fixed prices, and ended by taking the goods without paying for them. (Thiers, vol. iv. p. 38-52.) These and other tumults were, however, appeased, partly by the interference of the military, and partly

by the earnest remonstrances of the authorities: but the evil still went on increasing; corn diminished in quantity and increased in price; the national lands, on account of the uncertainty of their title and the instability of the government, were not sold, and thus the number of assignats was not contracted, and they were continually more and more depreciated.

At length the Convention, thinking that the depreciation might be stopped by laws, made it penal to exchange coin for paper, or to agree to give a higher price if reckoned in paper than if reckoned in coin. Still the over-issue had its natural effects: in June, 1793, one franc in silver was worth three francs in paper; in August it was worth six. Prices rose still higher; all creditors, annuitants, and mortgagees were defrauded of five-sixths of their legal rights; and the wages of the the labourers were equal in value only to a part of their former earnings. The Convention, unable any longer to resist, in May, 1793, passed a decree which compelled all farmers to declare the quantity of corn in their possession, to take it to the markets, and sell it there only at a price to be fixed by each commune, according to the prices of the first four months of 1793. No one was to buy more corn than would suffice for a month's consumption, and an infraction of the law was punished by forfeiture of the property bought and a fine of 300 to 1000 francs. The truth of the declaration might be ascertained by domiciliary visits. The commune of Paris also regulated the selling of bread: no person could receive bread at a baker's shop without a certificate obtained from a revolutionary committee, and the quantity was proportioned to the number of the family. A rope was moreover fixed to the door of each baker's shop, so that as the purchasers successively came, they might lay hold of it, and be served in their just order. Many people in this way waited during the whole night; but the tumults and disturbances were so great that they could often only be appeased by force, nor were they at all diminished by a regulation that the last comers should be served first. A similar maximum of prices was soon established for all other necessaries, such as meat, wine, vegetables, wood, salt, leather, linen, woollen, and cotton goods, &c.; and any person who refused to sell them at the legal price was punished with death. Other measures were added to lower the prices of commodities. Every dealer was compelled to declare the amount of his stock; and any one who gave up trade, after having been engaged in it for a year, was imprisoned as a suspected person. A new method of regulating prices was likewise devised, by which a fixed sum was assumed for the cost of production, and certain per-centages were added for the expense of carriage, and for the profit of the wholesale and retail dealers. The excessive issue of paper had likewise produced its natural consequence, over-speculation, even in times so unfavourable for commercial undertakings. Numerous companies were established, of which the shares soon rose to more than double or treble their original value. These shares, being transferable, served in some measure as a paper-currency; upon which the Convention, thinking that they contributed still further to discredit the assignats, suppressed all companies whose shares were transferable or negociable. The power of establishing such companies was reserved to the government alone.

In August, 1793, there were in circulation 3776 millions of assignats; and by a forced loan of 1000 millions, and by the collection of a year's taxes, this amount was subsequently reduced to less than two-thirds. The confidence moreover inspired by the recent successes of the republic against its foreign and domestic enemies, tended to increase the value of the securities on which the paper-money ultimately reposed: so that towards the end of 1793 the assignats are stated to have been at par. This effect is attributed by M. Thiers, in his 'History of the French Revolution' (vol. v. p. 407), to the severe penal laws against the use of coin: nevertheless we suspect that those who made this statement were deceived by false appearances, and that, neither at this nor any other time, not even at their first issue, did the real value of

assignats agree with their nominal value. (Thiers, vol. v. pp. 145-62, 196-208, 399-413.) However, this restoration of the paper-currency, whether real or apparent, was of very short duration, as the wants of the government led to a fresh issue of assignats: so that in June, 1794, the quantity in circulation was 6536 millions. By this time the law of the maximum had become even more oppressive than at first, and it was found necessary to withdraw certain commodities from its operation. Nevertheless, the commission of provisions, which had attempted to perform the part of a commissariat for the whole population of France, began to interfere in a more arbitrary manner with the voluntary dealings of buyers and sellers, and to regulate not only the quantity of bread, but also the quantity of meat and wood which each person was to receive. (Thiers, vol. vi. pp. 146-51, 307-14.) Other arbitrary measures connected with the supply of the army, as compulsory requisitions of food and horses, and the levying of large bodies of men, had contributed to paralyse all industry. Thus, not only had all commerce and all manufactures ceased, but even the land was in many places untilled. After the fall of Robespierre, the Thermidorian party (as it was called), which then gained the ascendency, being guided by less violent principles, and being somewhat more enlightened on matters of political economy than their predecessors, induced the Convention to relax a little of its former policy, and succeeded in first excepting all foreign imports from the maximum, and afterwards abolishing it altogether. The transition to a natural system was, however, attended with great difficulty and danger, as the necessary consequence of the change was a sudden and immense rise of the avowed prices; and trade having been so long prevented from acting for itself, did not at once resume its former habits; so that Paris, in the middle of winter, was almost in danger of starvation, and wood was scarcely more abundant than bread. As at this time the power of the revolutionary government to retain possession of the lands which it had confiscated and to give a permanently good title to purchasers, was not doubted, it is evident that a fear lest the national lands might not ultimately prove a valuable security did not now tend to discredit the assignats: their depreciation was solely owing to their over-issue, as compared with the wants of the country, and their inconvertibility with the precious metals. The government however began now to find that, although it might for some time gain by issuing inconvertible paper in payment of its own obligations, yet when the depreciated paper came to return upon it in the shape of taxes, it obtained in fact a very small portion of the sum nominally paid. Consequently they argued that, as successive issues depreciated the currency in a regular ratio (which however is very far from being the case), it would be expedient to require a larger sum to be paid for taxes according to the amount of paper in circulation. It was therefore decreed that, taking a currency of 2000 millions as the standard, a fourth should be added for every 500 millions added to the circulation. Thus, if a sum of 2000 francs was due to the government, it would become 2500 francs when the currency was 2500 millions, 3000 francs when it was 3000 millions, and so on. This rule however was only applied to the taxes and arrears of taxes due to the government, and was not extended to payments made by the government, as to public creditors or public functionaries. Nor did it comprehend any private dealings between individuals. (Thiers, vol. vii. pp. 40-51, 132-41, 232-89, 368-85, 420-8.) Iniquitous as this regulation was, as employed solely in favour of the government, it would nevertheless have been ineffective if its operation had been more widely extended; for the assignats, instead of being depreciated only a fifth, had now fallen to the 150th part of their nominal value. The taxes being levied in part only in commodities, and being chiefly paid in paper, produced scarcely anything to the government; which had however undertaken the task of feeding the city of Paris. Had it not in fact furnished something more solid than depreciated assignats to the fundholders and public functionaries, they must have died of starvation. Many, indeed, notwithstanding the scanty and

precarious supplies furnished by the government, were threatened with the horrors of famine; and numbers of persons threw themselves every evening into the Seine, in order to save themselves from this extremity. (Storch, *Economie Polit.* vol. iv. p. 168.)

To such a state of utter pauperism had the nation been reduced by the mismanagement of its finances and the ruin of public credit by the excessive issues of paper, that when the five Directors went to the Luxembourg, in October, 1795, there was not a single piece of furniture in the office. The doorkeeper lent them a rickety table, a sheet of letter-paper, and an inkstand, in order to enable them to write their first message to announce to the two Councils of State that the Directory was established. There was not a single piece of coin in the treasury. The assignats necessary for the ensuing day were printed in the night, and issued in the morning wet from the press. Even before the entry of the Directors into office, the sum in circulation amounted to 19,000 millions: a sum unheard of in the annals of financial profligacy. One of their first measures, however, in order to procure silver, was to issue 3000 millions in addition, which produced not much more than 100 million francs.

In this formidable state of things, the next measure adopted was worthy of the violent and shortsighted administration from which it emanated. A forced loan of 600 millions was raised from the richest classes, to be paid either in coin, or in assignats at the *hundredth* part of their nominal value. So that if the current paper was 20,000 millions, a payment of 200 millions would be sufficient to extinguish the whole. The government however refused to sanction this principle as against itself; for in paying the public creditor, it gave the assignat the *tenth* part of its nominal value. The land-tax and the duties in farm were required to be paid half in kind and half in assignats; the custom-duties, half in corn and half in assignats. In the meantime, until the funds produced by this loan, which was enforced with great severity, could be at the disposition of the state, the government went on issuing assignats till they had absolutely lost all value, and had become waste-paper. It therefore anticipated its resources by issuing promissory notes payable in specie, when the forced loan should be collected, and with difficulty prevailed on bankers to discount them to the amount of 60 millions. At this time the Directory gave up the task of supplying Paris with bread, and allowed the bakers' shops to be opened as before: an exception being made in favour of the indigent, and of fundholders and public functionaries whose annual incomes were not more than 5000 francs. The payment of the loan, however, went on slowly, the produce of the government bills was exhausted, and fresh funds were required. Again the resource of assignats was resorted to, and in two months the currency had been raised to 36,000 millions by the issue of 20,000 millions, which even to the government were not worth the 200th part of their nominal value.

By this time some new financial expedient became necessary. It was expected that, by payments of taxes and of the forced loan to the government, the paper in circulation would soon be reduced to 24,000 millions. It was therefore determined to make a new issue of paper, under the name of *mandats*, to the amount of 2400 millions. Of this sum 800 millions were to be employed in extinguishing 34,000 millions of assignats, which were to be taken at a thirtieth part of their legal value: 600 millions were to be allotted to the public service, and the other 1200 millions retained in the public coffers. These mandats were to enable any person who was willing to pay the estimated value of any of the national lands to enter at once into possession; and therefore they furnished a somewhat better security than the assignats, as these could only be offered in payment at sales by auction; and consequently the price of the lands rose in proportion to the depreciation of the paper. The estimate of the lands having been made in 1790, was not true in 1795, at which time they had in some cases lost a half, in others two-thirds or three-fourths of their former value. The mandat of 100 francs, however, at its first issue, was worth only fifteen francs in silver; and the new

paper was soon so much discredited, that it never got into general circulation, and was not able to drive out the coined money, which was now almost universally employed in transactions between individuals. The only holders of mandats were speculators, who took them from the government and sold them to purchasers of national lands. By this entire discredit of the government-paper the prosperity of individuals had been in some measure restored, and trade revived a little from its long sleep. The government was destitute of all resource; its agents received nothing but worthless paper, and refused any longer to do their duties. The armies of the interior were in a state of extreme misery; while those of Germany and Italy were maintained only from the countries where they were quartered. The military hospitals were shut, the gens-d'armes were not paid or equipped, and the high roads were infested with bands of robbers, who sometimes even ventured into the towns.

In a short time the government were forced to abandon the mandats, as they had abandoned the assignats, and to declare that they should be received in payment of taxes and national lands only at their real value. Having fallen to near a seventieth of their ostensible value, they were, in the course of 1796, returned to the government in payment of taxes and for the purchase of lands; and with them ended the revolutionary system of paper-money, which probably produced more wide-spreading misery, more sudden changes from comfort to poverty, more iniquity in transactions both between individuals and the government, more loss to all persons engaged in every department of industry and trade, more discontent, disturbance, profligacy, and outrage, than the massacres in September, the war in La Vendée, the proscriptions in the provinces, and all the sanguinary violence of the Reign of Terror.

From the extinction of the mandats to the present time the legal currency of France has been exclusively metallic. (Thiers, vol. viii. pp. 85-9, 103-19, 158-62, 177, 183-91, 334-44, 423-4; Storch, *Cours d'Econ. Pol.* vol. iv. p. 164.)

ASSIGNATION. [ASSIGNMENT.]

ASSIGNEE—of a bankrupt. [BANKRUPT.]

ASSIGNEE—of an insolvent debtor's estate. [INSOLVENT DEBTOR.]

ASSIGNEE—of bill of lading. [BILL OF LADING.]

ASSIGNEE of a lease is the party to whom the whole interest of the lessee is transferred by assignment, which assignment may be made without the privity or consent of the lessor, unless the lessee is restrained by the lease from assigning over. The assignee becomes liable to the lessor, from the date of the assignment, for the payment of the rent and performance of the covenants in the lease; but such liability is limited to breaches of covenant during the existence of the assignee's interest, and may be got rid of by assigning over all his interest, and this even to an insolvent; for his liability, arising only from privity of estate, that is, from the actual enjoyment of the premises leased, ceases with such enjoyment; whereas the lessee remains liable to the rent and covenants during the whole term. It results also from the circumstance of the assignee's liability arising from privity of estate, that he is not liable to mere personal covenants which the lessee may have made with the lessor (as for instance, to build on premises not demised, or to pay a sum of money in gross), but only to such covenants as run with the land, as for instance, covenants to pay rent, to repair, to reside on the demised premises, to leave part of the land in pasture, to insure premises situate within the weekly bills of mortality, to build a new mill on the site of an old one, &c. The assignee, in order to become liable to the covenants, must take the whole estate and interest of the lessee; for if the smallest portion is reserved, he is merely an under-lessee, and not responsible to the original lessor. The interest of the assignee must also be a legal, not merely an equitable interest; and therefore if the lessee devise the premises leased to trustees in trust for A B, A B will not be chargeable as the assignee of the lessee's interest. The interest must also be an interest in lands or tenements; for if a lease is made of chattels (as for instance of sheep or cows, which sometimes happens), and the lessee cove-

nant for himself and his assigns to redeliver them, the assignee is not liable to the owner on this covenant; for there is no privity between the assignee and the owner, such privity only existing where the subject of the demise is real estate. Wilmot, C. J., says, in Bally *v.* Wells, "The covenant in this case is not collateral; but the parties, that is, the lessor and assignee, are total strangers to each other, without any line or thread to unite and tie them together, and to constitute that privity which must subsist between debtor and creditor to support an action." (Wilmot, 345.) The assignee may acquire his interest by operation of law, as well as by an actual assignment from the lessee, and therefore a tenant by *elegit*, who has purchased a lease under an execution, is liable as assignee to the lessor in respect of his privity of estate.

ASSIGNEE. In the long leases peculiar to the agricultural system of Scotland, the law affecting the right of transference to assignees has been held to be of peculiar importance. In an agricultural lease of ordinary length, assignees are excluded without stipulation; a lease beyond the ordinary length may be assigned where there is no stipulation to the contrary. It is usual to divide such leases into periods of nineteen or twenty-one years, a lease of one such period being considered an ordinary, and a lease of two or more such periods being an improving lease and in its nature assignable. A lease specially excluding assignees cannot be conducted for the benefit of the lessee's creditors should he become bankrupt, unless under the administration of the lessee himself. In leases of houses, gardens, or other premises not let for agricultural purposes, the right to assign is assumed, if not excepted by stipulation; but where the lease is for a particular purpose, the lessee cannot assign it for a totally different purpose: thus one who became tenant of a shop as a silk-mercer, was not allowed to assign his lease to an exhibiter of wax figures.

ASSIGNMENT, a deed or instrument of transfer, the operative words of which are to "assign, transfer, and set over," and which transfers both real and personal property. Estates for life and estates for years are the principal interests in land which are passed by an assignment; and by the statute of Frauds and Perjuries (29 Charles II.) the assignment of such estates is required to be in writing. An assignment differs from a lease, in being a transfer of the entire interest of the lessor; whereas a lease is an estate for years taken out of a greater estate, creates the relation of landlord and tenant, and reserves to the lessor a reversion. If, however, a deed in effect passes the whole interest of the tenant, it operates as an assignment, though it be in form a lease, and though it reserve a rent. If A, having a term of twenty years in land, grants to B the whole twenty years, reserving a rent: in such case B is assignee of the whole term and interest, and not underlessee to A; and A, for want of having a reversion, cannot distrain for the rent. A, in such case, can only sue B for the rent as for money due upon a contract. In all under-leases, therefore, it is necessary that part of the original term should remain in the lessor: a day is sufficient. (Sheppard's *Touchstone*, 266; Blackstone, *Comm.* v. ii. 326; Bacon, *Ab.* 7th edit. tit. *Assignment*.

An Assignment of Goods, Chattels, &c. is frequently made by BILL OF SALE. As to all goods and chattels *in possession*, no objection ever existed to their transfer and assignment by deed of writing; but with respect to things *in action, choses in action*, as they are technically called (as debts, for instance), according to an ancient rule of the common law, now considerably modified, they could not be assigned over by the party to whom they were due, since the assignment gave to a third party a right of action against the debtor, and thus led to the offence of maintenance—that is, the abetting and supporting of suits in the king's courts by others than the actual parties to them. In the courts of common law this rule exists (with some exceptions) at the present day. Thus, if the obligee in a bond assign over the bond to a third party, the assignee cannot sue on the bond at common law in his own name; but such an assignment generally contains (and ought always to do so) a power of attorney from the obligee to the assignee, to sue in the obligee's name on

the bond. Courts of equity have always protected such assignments, and regarded the assignee, for valuable consideration, as the actual owner of the bond; and the courts of common law so far recognise the right of the assignee, that if the obligor, after notice of the assignment, pay the money on the bond to the obligee, the courts will not permit him to plead such payment to an action brought by the assignee in the obligee's name on the bond. There are various things that are not assignable even in equity, for various legal reasons. A husband is entitled to sue for his wife's choses in action, and he can assign them, that is, sell them, to another person; but as his right to assign is founded on his power to obtain the wife's choses in action by legal means, it follows that if at the time of the assignment the husband has not the power to obtain possesion of his wife's choses in action, the assignment has no immediate effect. Neither the future whole-pay nor the future half-pay of an officer is capable of being assigned, it being considered contrary to public policy that a stipend given to a man for his public services should be transferred to another man not capable of performing them. The exceptions to the rule that *choses in action* are not assignable at law are many. The king might at all times become the assignee of a *chose in action;* and after such an assignment he was entitled to have execution against the body, lands, and goods of the debtor. But this prerogative, having been abused by the king's debtors, was restrained by stat. 7 James I. c. 15, by a privy seal in 12 James I., and by rule of court of 15 Charles I.; and the practice of actually assigning debts to the king by his debtors has long become obsolete. Bills of exchange are assignable by indorsement, in virtue of the custom of merchants [BILL OF EXCHANGE]; and promissory notes, by virtue of the 3 & 4 Anne, c. 9. Bail bonds are assignable by the sheriff to plaintiff in the suit under 4 Anne, c. 16, s. 20. Replevin bonds, by the 11 Geo. II. c. 19. The petitioning creditor's bond under a fiat of bankruptcy, by 6 Geo. IV. c. 16.

The word assignment contains the same elements as the Roman word "assignatio," or "adsignatio," which among other significations had that of an "assignment" of land, that is, a marking out by boundaries (signa) portions of public land which were given by the state to its citizens or veteran soldiers. Also it was used to signify the sealing of a written instrument, from which notion we easily pass to the notion of the effect of the sealed instrument, which is the sense that the word has obtained among us.

ASSIGNMENT. The term assignment is in colloquial use in Scotland, but the word which supplies its place in legal nomenclature is assignation. In some instances, however, where statutes employing the phraseology of the English law have been extended to Scotland, the word assignment has necessarily obtained a partial technical use in that part of the empire, *e. g.* in the transference of property in copyright, patents, and registered vessels. Assignations are a feature of considerable importance in the law of Scotland, both with reference to heritable or real, and to moveable property. The definition of an assignation as distinguished from any other species of conveyance is, that it conveys not a thing, but a title to a thing. Thus a bill of exchange comes within the character of an assignation, because it is, or professes to be, a conveyance in favour of the payee of a right in the person of the drawer to a sum due to him by the drawee. There is no rule known in the law of Scotland equivalent to that which affects the conveyance of a chose in action in England; and except in those cases when from public policy, from the *delectus personæ* involved in the obligation, or from some other special cause, a transferance is invalid, a right exigible by one person is capable of being made over by assignation to another.

Assignations are of great importance in the conveyance of heritable or real property. The old system of subinfeudation being still in operation in Scotland, a proprietor of heritable subjects whose right is indisputable, is frequently not in the position of having received feudal investiture from his superior. He is said in such a case to have a mere personal right, as holding in his hands the authority

for making his title real by investiture. This authority he transfers by assignation, and property is thus frequently passed through several hands by assignation before it is found expedient or necessary to complete the investiture. In conveyances of landed property such title-deeds as the party conveying has agreed to give to the party receiving, are transferred by assignation. For assignations to leases see ASSIGNEE.

As the transfer of moveable property is completed by delivery, the person who has the possession cannot convey (as in the case of land) his right to the thing as separate from the thing itself, and thus an assignation affecting moveable property can only take place when it is in the hands of a third party. The simple act of assignation may be effectual in all questions between the cedent and the assignee, but to make the third party who holds the property in his hands responsible as holding it for the latter and not for the former, the further ceremony of a formal intimation is necessary; and until such intimation be made, the cedent's creditors may attach the property in the hands of the holder. Presentment is the proper form of intimation in the case of a bill of exchange. In its most formal shape, an intimation of an assignation is made by the reading of the document to the debtor in presence of a notary and witnesses, and the evidence of the ceremony is the notarial certificate; but in the general case, other circumstances which put the fact of intimation beyond doubt, such as the debtor's admission of his liability to the assignee, are held as equivalents.

ASSIZE. This word has been introduced into our legal language from the French *assis*, and is ultimately derived from the Latin verb *assideo*, to sit by, or, as Coke incorrectly translates it, to sit together. The word *assido* is also found in legal records, and has a different meaning from *assideo*, signifying to assess, fix, or ordain. Thus in the *postea*, or formal record of a verdict in a civil action, it is said that the jury find for the plaintiff, *et assidunt damna ad decem solida*—"and they assess the damages at ten shillings;" and then the judgment of the court is given for the damages "per juratoris in formâ prædictâ *assessa*." It is possible that the word assize, in cases where it signifies an ordinance, decree, or assessment, may be derived from this word. This etymology is not, however, given by Du Cange, Spelman, or any learned writer on this subject; though it obviously leads much more distinctly to several meanings of the word assize than the derivation from *assideo*. With reference to English law, the word assize has been called by Littleton *nomen æquivocum*, on account of its application to a great variety of objects, in many of which neither the etymology of the word nor its original meaning can be readily traced. In this article it is proposed to enumerate and explain in a summary manner the various significations of the term.

1. The term assize also signified an ordinance or decree made either immediately by the king or by virtue of some delegation of the royal authority. Thus the Assizes of Jerusalem were a code of feudal laws for the new kingdom of Jerusalem, formed in 1099, by an assembly of the Latin barons, and of the clergy and laity, under Godfrey of Bouillon. (Gibbon's *Decline and Fall*, vol. xi. p. 93.) In this sense also, in ancient English history, Fleta speaks of "the laws, customs, and *assizes* of the realm" (lib. i. cap. 17); and the ordinances made by the great council of nobles and prelates assembled by Henry II. in 1164, and commonly known as the "Constitutions of Clarendon," are called by Hoveden "*Assisæ* Henrici Regis factæ apud Clarendonum." In like manner the assizes of the forest were rules and regulations made by the courts to which the management of the royal forests belonged.

2. Analogous to these were the assizes or ordinances regulating the price of bread, ale, fuel, and other common necessaries of life, called in Latin *assisæ venalium*. The earliest express notice of any regulation of this kind in England is in the reign of King John (1203), when a proclamation was made throughout the kingdom enforcing the observance of the legal assize of bread; but it is probable that there were more ancient ordinances of the same kind. In very early times these "assisæ venalium" appear to have

been merely royal ordinances, and their arrangement and superintendence were under the direction of the clerk of the market of the king's household. But subsequently many statutes were passed regulating the assize of articles of common consumption; the earliest of these is the assize of bread and ale, "assisa panis et cervisiæ," commonly called the stat. of 51 Henry III., though its precise date is somewhat doubtful. The provisions of the act with regard to ale, which established a scale of prices varying with the price of wheat, were altered in some measure by 23 Henry VIII. c. 4, which left a discretionary power with the justices of the peace of fixing the price of ale within their jurisdiction [ALE]; but the assize of bread was imposed by this act, and enforced from time to time by orders of the privy council until the reign of Queen Anne. In cities and towns corporate the power of regulating the assize of bread and ale was frequently given by charter to the local authorities, and the interference of the clerk of the king's household was often expressly excluded. Books of assize were formerly published, under authority of the privy council, by the clerk of the market of the king's household. The stat. 8 Anne, c. 19, repealed the 51 Henry III. and imposed a new assize of bread, and made various other regulations respecting it. Several subsequent acts have been passed on the subject; but by the 55 George III. c. 99, the practice was expressly abolished in London and its neighbourhood, and in other places it has fallen into disuse. There was also an assize of wood and coal (stat. 34 & 35 Henry VIII. c. 3); and in the reign of Queen Anne, we find an act (9 Anne, c. 20) enforcing former regulations for the assize of billet (firewood). Besides these, various other articles, wine, fish, tiles, cloth, &c., have at different times been subject to assize. Indeed the legislature of this country for a long time supposed that they could and ought to fix the price of the necessaries of life. But experience has shown that to attempt to fix by law the prices of commodities, is not only useless and mischievous, but impracticable; and that when government has established a uniform scale of weights and measures, and, so far as it can be done, a uniform measure of value, the rest may safely be left to competition, and to the mutual bargaining which takes place between the buyer and the seller.

There is an assize of bread in several parts of the Continent at the present time. In Paris, since 1825, the assize of bread has been fixed every fifteen days by an order of the police. This assize is regulated according to the prices of corn and of flour, which are published between the dates of each order. In the city of Cologne, and probably elsewhere in Prussia, the price of the loaf of black bread weighing eight (German) pounds is now (1844) fixed weekly by an order issued from the "royal police-office."

Kent, in his 'Commentaries on American Law,' says that "Corporation ordinances, in some of our cities, have frequently regulated the price of meats in the market;" and he states that "the regulation of prices in inns and taverns is still the practice in New Jersey and Alabama, and perhaps in other states; and the rates of charges are, or were until recently, established in New Jersey by the county courts and affixed up at inns, in like manner as the rates of toll at toll-gates and bridges." (Vol. ii. p. 330, ed. 1842.)

3. The word assize also denoted the peculiar kind of jury by whom the writ of right was formerly tried, who were called the grand assize. The trial by the *grand assize* is said to have been devised by Chief Justice Glanville, in the reign of Henry II., and was a great improvement upon the trial by judicial combat, which it in a great degree superseded. Instead of being left to the determination by battle, which had previously been the only mode of deciding a writ of right, the alternative of a trial by the grand assize was offered to the tenant or defendant. Upon his choosing this mode of trial, a writ issued to the sheriff directing him to return four knights, by whom twelve others were to be elected, and the whole sixteen composed the jury or grand assize by whom the matter of right was tried. The act of parliament, 3 & 4 Will. IV. c. 27, has now abolished this mode of trial.

[JURY.] By the law of Scotland, the jury, in criminal cases, are still technically called the assize.

4. The common use of the term assize at the present day in England is to denote the sessions of the judges of the superior courts, holden periodically in each county for the purpose of administering civil and criminal justice. These assemblies no doubt originally derived their denomination from the business which was at first exclusively imposed upon them, namely, the trial of writs of assize. According to the common law, assizes could only be taken (*i. e.* writs of assize could only be tried) by the judges sitting in term at Westminster, or before the justices in eyre at their septennial circuits. This course was productive of great delays to suitors, and much vexation and expense to the juries, or grand assize, who might have to travel from Cornwall or Northumberland, to appear in court at Westminster. To remedy this grievance, it was provided by Magna Charta, in 1215, that the judges should visit each county to take assizes of novel disseisin and mort d'ancestor. "Trials upon the writs of novel disseisin and of mort d'ancestor and of darreine presentment shall be taken but in their proper counties, and after this manner:—We (or if we are out of the realm) our chief justiciary shall send two justiciaries through every county four times a-year, who, with the four knights chosen out of every shire by the people, shall hold the said assizes in the county, on the day and at the place appointed. And if any matters cannot be determined on the day appointed to hold the assizes in each county, so many of the knights and freeholders as have been at the assizes aforesaid shall be appointed to decide them, as is necessary, according as there is more or less business." (Arts. 22 and 23, Magna Charta.) From this provision the name of justices of assize was derived; and by several later acts of parliament various authorities have been given to them by that denomination. By the 13 Edward I. c. 3 (commonly called the statute of Westminster 2), it was enacted, that the justices of assize for each shire should be two sworn judges, associating to themselves one or two discreet knights of the county; and they are directed to take the assizes not more than three times in every year. By the same statute, authority is given them to determine inquisitions of trespass and other pleas pleaded in the courts of King's Bench and Common Pleas. From this important act of parliament the jurisdiction of the judges of assizes to try civil causes, other than the writs of assize above mentioned, originally arose; and as, with some modifications, it forms the basis of their civil jurisdiction at the present day, it will be useful to explain the process by which the provisions of the statute are carried into effect. Besides the general authority to determine civil issues, it was provided by the statute of Westminster 2, that no inquest in a civil action should be taken by the judges of the superior courts when sitting at Westminster, unless the writ which summoned the jury for such inquest appointed a certain day and place for hearing the parties in the county where the cause of action arose. Thus, if a suit arose in Cornwall, the writ from the superior court must direct the sheriff of that county to return a jury at Westminster for the trial of the inquest in the next term, "*unless before*" (*nisi prius*) the term, namely on a certain day specified in the writ, the justices of assize came into Cornwall. This was sure to happen under the directions of a previous clause in the statute of Westminster 2, in the course of the vacation before the ensuing term, and the jury were then summoned before the justices of assize in Cornwall, where the trial took place, and the parties avoided all the trouble and expense of conveying their witnesses and juries to London. The jurisdiction of the judges of *nisi prius* is therefore an addition to their office of justices of assize; and thus, from the alteration in the state of society since the above laws were made, the principal or substantial part of their jurisdiction has, by the discontinuance of writs of assize, become merely nominal, while their annexed or incidental authority has grown into an institution of great practical importance.

For several centuries, until a few years ago, the whole of England was divided

into six circuits, to each of which two judges of assize were sent twice a-year. Previously to the year 1830, the Welsh counties, and the county palatine of Chester, were independent of the superior courts at Westminster, and their peculiar judges and assizes were appointed by the crown under the provisions of several statutes. This separation of jurisdiction being found inconvenient, the statute 1 William IV. c. 70, increased the number of judges of the superior courts, and enacted, that in future assizes should be held for the trial and despatch of all matters criminal and civil within the county of Chester and the principality of Wales under commissions issued in the same manner as in the counties of England. Since the passing of this statute, therefore, the assizes throughout the whole of England and Wales (excepting London and the parts adjoining) [CIRCUITS] have been holden twice a-year in each county upon a uniform system. Previous to the establishment of the Central Criminal Court in London, a third assize for the trial of criminals was held for several years for the counties of Hertford, Essex, Kent, Sussex, and Surrey.

The judges upon the several circuits derive their civil jurisdiction ultimately from the ancient statutes of assize and *nisi prius* in the manner before described; but they have also a commission of assize which is issued for each circuit by the crown under the great seal. This commission pursues the authority originally given by Magna Charta and the statutes of *nisi prius*, and seems to have been nearly in the same form ever since the passing of those statutes. It is directed to two of the judges and several serjeants (the serjeants derive their authority to be judges of assize from the statute 14 Edward III. c. 16, which mentions "the king's serjeant sworn," under which words Coke says that any serjeant at law is intended (2 *Inst.* 422), and commands them "to take all the assizes, juries, and certificates, before whatever justices arraigned." Under the direct authority given by these words, the commissioners have in modern times nothing to do, the "assizes, juries, and certificates" mentioned in the commission having only a technical reference to the writs of assize, now wholly discontinued. It is stated in most of the common text-books that the judges of assize have also a commission of *nisi prius*. This is, however, a mistake; no such commission is ever issued, and the only authority of the judges to try civil causes is annexed to their office of justices of assize in the manner above described.

In certain cases, the justices of assize, as such, have by a statute a criminal jurisdiction; but the most important part of their criminal authority is derived from other commissions. The first of these is a general commission of Oyer and Terminer for each circuit, which is directed to the lord chancellor, several officers of state, resident noblemen and magistrates, and the king's counsel and serjeants on their respective circuits; but the judges, king's counsel, and serjeants, are always of the quorum, so that the other commissioners cannot act without one of them. This commission gives the judges of assize express power to try treason, felony, and a great variety of offences against the law of England, committed within the several counties composing their circuit. [OYER AND TERMINER.]

The judges of assize have also commissions of gaol delivery, which in their legal effect give them several powers which, as Justices of Oyer and Terminer only, they would not possess. They are directed to the judges, the king's counsel, and serjeants on the circuit, and the clerk of assize and associate. Every description of offence is cognizable under this commission; but the commissioners are not authorized to try any persons except such as are in actual or constructive confinement in the gaol specifically mentioned in their commission. There is a distinct commission under the great seal for the delivery of the prisoners in each particular gaol. [GAOL DELIVERY.]

The judges on their circuits have also a commission of assize. In addition to the above authorities, the judges of the superior courts on the circuits are also in the commission of the peace. The judges of the King's Bench, Common Pleas, and Exchequer, for the time being, are always

inserted in the commissions of the peace periodically issued for each English county; and consequently they may exercise all the powers and functions communicated by the commissions of the particular counties which compose their respective circuits.

In practice, the judges of the courts at Westminster choose their circuits by arrangement among themselves on each separate occasion. They are then formally appointed by the king under the sign manual; and the several commissions are afterwards made out in the Crown Office of the Court of Chancery from a fiat of the lord chancellor.

ASSIZE. In the practice of the criminal courts of Scotland, the fifteen men who decide on the conviction or acquittal of an accused person are called the assize, though in popular language, and even in statute, they are called the jury. [JURY.]

ASSOCIATIONS. [SOCIETIES.]

ASSURANCE. Of late years it has become usual with writers on life contingencies to speak of *assurances* upon lives, instead of *insurances*, reserving the latter term for contingencies not depending on life, as against fire, losses at sea, &c. [INSURANCE; ANNUITIES, &c.]

ASY'LUM, the Latin and English form of the Greek Ἄσυλον, which is generally supposed to be made up of *α privative* and the root of the verb συλάω, "to plunder," and therefore to signify, properly, a place free from robbery or violence, but this etymology is doubtful. Some have derived the Greek word from the Hebrew אשל, "a grove;" the earliest asylums, it is said, having been usually groves sacred to certain divinities. It is a pretty, rather than perhaps a very convincing illustration of this etymology, which is afforded by Virgil's expression as to the asylum opened by Romulus:—

"Hinc locum ingentem, quem Romulus acer asylum
Retulit."—*Æn.* viii. 343.

The tradition was, that Romulus made an asylum of the Palatine Hill preparatory to the building of Rome. Plutarch tells us that he dedicated the place to the god Asylæus (*Romulus*, 9).

Probably all that is meant by these stories is, that in those ages whoever joined a new community received shelter and protection; and even if he had committed any crime, was neither punished by those whose associate he had become, nor surrendered to the vengeance of the laws or customs which he had violated. Such an asylum was merely a congregation of outlaws bidding defiance to the institutions of the country in which they had settled, and proclaiming their willingness to receive all who chose to come to them.

In the Grecian states, the temples, or at least some of them, had the privilege of affording protection to all who fled to them, even although they had committed the worst crimes. The practice seems to have been, that they could not be dragged from these sanctuaries; but that, nevertheless, they might be forced to come out by being prevented from receiving food while they remained. (Thucydides, i. 126, 134.) Cleomenes, the king of Sparta, induced some Argives, who had taken refuge from him in a sacred place, to come out of it by false pretences, and all who came out were massacred. The rest, on discovering his treachery to their companions, would not come out, upon which the king ordered the place to be burnt, and, as we may presume, all the people in it perished; but the vengeance of the deity, according to the opinion of the Argives, overtook Cleomenes for this cruelty, and his subsequent madness was alleged as the consequence of this atrocious act. (Herodotus, vi. 80.) Eventually, these places of refuge became great nuisances, being, especially among the Greek cities, established in such numbers as sometimes almost to put an end to the administration of justice. In the time of the Emperor Tiberius an attempt was made to repress this evil by an order of the senate, directed to all the pretended asylums, to produce legal proofs of the privilege which they claimed. (Tacitus, *Annal.* iii. 60, &c.) Many were put down in consequence of not being able to satisfy this demand. Suetonius states that all the asylums throughout the empire were abolished by the Emperor Tiberius (Suetonius, *Tiberius*, 37); but the state-

ment of Suetonius is inconsistent with that of Tacitus.

The term *Asylus* (Ἄσυλος) was given as an epithet to certain divinities; as, for example, to the Ephesian Diana. It is also found on medals as an epithet of certain cities; in which application it probably denoted that the city or district was under the protection of both of two otherwise belligerent powers, and enjoyed accordingly the privileges of neutral ground.

It does not appear that the Roman temples were asyla, like many of the Greek temples. The complaint of the abuse of asyla, which is recorded by Tacitus, refers only to Greek temples. If the practice existed elsewhere, it may be inferred that it was not so extensive. Under the Empire however it became a practice to fly for asylum to the statues or busts of the emperors ("ad statuas confugere vel imagines," *Dig.* 48, tit. 19. s. 28, § 7), and the practice was accordingly so regulated as to render the asylum ineffectual unless the person who sought it had escaped from the custody of a more powerful person (ex vinculis vel custodia, detentus à potentioribus). A constitution of Antoninus Pius declared that if a slave in the provinces fled to the temples or the statues of the emperors to escape the ill-usage of his master, the governor of the province might compel the master to sell him (Gaius, i. 53). The words of the rescript of Antoninus are quoted in the Institutes of Justinian (i. tit. 8. s. 2).

After the decline and fall of paganism, the privilege of serving as asylums for malefactors was obtained by the Christian temples. The credit of conferring this honour upon churches in general is attributed to Pope Boniface V., in the beginning of the seventh century; but more than two hundred years before, certain sacred buildings of the new religion are said to have been declared asylums by the Emperor Honorius. Indeed, the practice of churches being used as asyla is said to date from the conversion of Constantine the Great (A.D. 323). The asylums thus established eventually grew throughout all Christendom to be a still more intolerable abuse than those of the ancient world had been. In most countries, not only churches and convents, with their precincts, but even the houses of the bishops, came to be at length endowed with the privilege of sanctuary. In all these places the most atrocious malefactors might be found bidding defiance to the civil power. At the same time, there can be no doubt, that while in this way criminals were frequently rescued from justice, protection was also sometimes afforded to the innocent, who would not otherwise have been enabled to escape the oppression or private enmity which pursued them under the perverted forms of law. The institution was one of the many then existing which had the effect of throwing the regulating power of society into the hands of the clergy, who certainly were, upon the whole, the class in whose hands such a discretion was least likely to be abused. When communities, however, assumed a more settled state, and the law became strong with the progress of civilization, the privileges which had at one time armed the church as a useful champion against tyranny, became not only unnecessary, but mischievous. The church maintained a long and hard struggle in defence of its old supremacy; and in the face of the stand thus made, and in opposition to ancient habits, and the popular superstition by which they were guarded, it was only very cautiously that attempts could be made to mitigate the evil. For a long time the legal extent of the privilege of sanctuary appears to have been matter of violent dispute between the church and the civil power. In this country, it was not till the year 1487, in the reign of Henry VII., that by a bull of Pope Innocent VIII. it was declared, that if thieves, robbers, and murderers, having taken refuge in sanctuaries, should sally out and commit fresh offences, and then return to their place of shelter, they might be taken out by the king's officers. It was only by an Act of Parliament passed in 1534, after the Reformation, that persons accused of treason were debarred of the privilege of sanctuary. After the complete establishment of the Reformation, however, in the reign of Elizabeth, neither the churches nor sanctuaries of any other description were allowed to become places of refuge for

either murderers or other criminals. But various buildings and precincts in and near London continued for a long time after this to afford shelter to debtors. At length, in 1697, all such sanctuaries, or pretended sanctuaries, were finally suppressed by the Act 8 & 9 Will. III. c. 26.

In Scotland, the precincts of the palace of Holyrood in Edinburgh still remain a sanctuary for debtors. The boundaries of this privileged place are somewhat extensive, comprehending the whole of what is called "the King's Park," in which is the remarkable hill called "Arthur's Seat." The debtors find lodgings in a short street, the privileged part of which is divided from the remainder by a kennel running across it. Holyrood retains its privilege of sanctuary as being a royal palace; but it is singular as being now the only palace in this country any part of the precincts of which is the property, or at least in the occupation, of private individuals, and therefore open to the public generally.

In England, a legal asylum, or privileged place, is called a sanctuary; and this use of the word sanctuary appears to be peculiar to the English language. Both in this country and in America, the name of asylum is commonly given to benevolent institutions intended to afford shelter neither to criminals nor to debtors, but to some particular description of the merely unfortunate or destitute.

The Jewish Cities of Refuge, established by Moses and Joshua, are the most remarkable instance on record of a system of asylum founded and protected by the state itself for the shelter of persons who had violated the law. These cities, as we are informed in the twentieth chapter of the Book of Joshua, were six in number, three on each side of the Jordan. They only however protected the person who had killed another unwittingly. With regard to such a person the command was, "If the avenger of blood pursue after him, then they shall not deliver the slayer up into his hand; because he smote his neighbour unwittingly, and hated him not beforetime. And he shall dwell in that city, until he stand before the congregation for judgment, and until the death of the high-priest that shall be in those days; then shall the slayer return, and come unto his own city, and unto his own house; unto the city from whence he fled." (*Joshua*, xx. 5, 6.) This institution may be regarded as an ingenious device for protecting, on the one hand, the guiltless author of the homicide from the popular resentment which his unfortunate act would have been likely to have drawn upon him; and cherishing, on the other, in the public mind, that natural horror at the shedding of human blood, which, in such a state of society, it would have been so dangerous to suffer to be weakened. We see the same principle in the penalty of the deodand imposed by the English law in the case of the accidental destruction of life by any inanimate object.

One of the most curious instances of the privilege of the sanctuary is that long enjoyed in Scotland by the descendants of the celebrated Macduff, Thane of Fife, the dethroner of the usurper Macbeth. It is said to have been granted at the request of the thane by Malcolm III. (Canmore), on his recovery of the crown of his ancestors, soon after the middle of the eleventh century. By this grant it was declared that any person, being related to the chief of the clan Macduff within the ninth degree, who should have committed homicide without premeditation, should have his punishment remitted for a fine, on flying to Macduff's Cross, which stood near Lindores in Fifeshire. Although this, however, is the account of the old Scottish historians, it is probable that the privilege only conferred upon the offender a right of being exempted from all other courts of jurisdiction except that of the Earl of Fife. Sir Walter Scott, in his *Minstrelsy of the Scottish Border*, has printed a Latin document of the date of A.D. 1291, in which the privilege to this latter extent is pleaded in favour of an Alexander de Moravia. The original deed is still in existence. Of Macduff's Cross only the pedestal now remains, the cross itself having been destroyed at the Reformation. It bore a metrical inscription, in a strange half-Latin jargon, the varying copies of which, still preserved, have given much occupa-

tion to the antiquaries. (Sibbald's *History of Fife*, particularly the second edition, 8vo. Cupar-Fife, 1802; Cunninghame's *Essay upon Macduff's Cross;* and Camden's *Britannia*, by Gough.) [SANCTUARY.]

ATHELING, or ÆTHELING. The indications, in the Saxon period of our history, of anything like the hereditary nobility of the times after the Conquest are exceedingly few: certainly, the system which gives to particular families particular names of distinction and particular social privileges, which are to descend in the families as long as the families endure, we owe entirely to the Normans. The Saxons had among them earls, but that word was used to designate, not as in these times only a rank of nobility, to which certain privileges are attached, but a substantial office bringing with it important duties; he was the superintendent indeed, under the king, of one of the counties or shires, and the sheriff, gerefa, in Latin vice-comes, was his inferior, his delegate or deputy. These earls, who were nominated by the king, held their offices as it seems for life, and were usually selected from the most opulent families. Even the kingship among the successors of Egbert seems not to have descended uniformly according to our modern principles of hereditary succession.

When the word Atheling has been found following a name by which a Saxon was designated, it has been supposed by some persons to be of the nature of a surname; and especially in the instance in which it is found united with Edgar, in him who was the last male in that illustrious family. Polydore Virgil, an Italian, who in the middle of the sixteenth century wrote a history of England in elegant Latin, falls into this error; for which he is rebuked by Selden, the author of the admirable work on the various titles of honour which have been in use in the countries of modern Europe. He shows that Edgar Atheling is the same as Edgar the Atheling, or the noble, and that while some of our earlier chroniclers, as Henry of Huntingdon and Matthew Paris, so designate him, others, as Hoveden and Florence, call him Edgarus Clyto. *Clyto* is the Greek term answering to *eminent, illustrious*. It is rather a remarkable fact concerning the Saxon kings of England and their families, that they affected titles and denominations of Greek origin, as Clyto, Basileus (king), and adelphe (sister); the last appears on the seal of the royal abbess of Wilton.

Nothing is known of any peculiar privileges belonging to the Athelings. But those who in modern times have had occasion to speak of the term and the circumstances under which it was used, such as Lingard and Turner in their histories of the Saxon period, speak of lands being usually given to the Atheling while still in his minority. And hence it is that this word Atheling has descended to our times in the local nomenclature of England.

ATTACHMENT, FOREIGN. This is a judicial proceeding, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer to an action; and afterwards, upon his continued default, of obtaining the goods or property in satisfaction of the demand. The process in England is founded entirely upon local customs, and is an exception to the general law. It exists in London, Bristol, Exeter, Lancaster, and some other towns in England; and a mode of securing the payment of a debt by a proceeding against the debtor's goods in the hands of third persons, strongly resembling the process of foreign attachment, with some modifications, and under different names, forms a part of the law of Scotland, Holland, and most European countries in which the civil law prevails. In Scotland this proceeding is called ARRESTMENT. Many remarks upon the Scotch practice of attaching property, called arrestment, will be found in the examination of Mr. William Bell, in Appendix D to the Fourth Report of the Common Law Commissioners. In France a process of this kind exists under the name of *saisie-arrêt;* the regulations respecting it are in the *Code de Procédure Civile*, Partie I. livre 5, tit. 7, 557—582.

The custom of foreign attachment in

London differs in no material respect from the same custom in other parts of England; it is, however, much more commonly resorted to in the lord-mayor's and the sheriff's courts of London, than in any other local courts. It is not so much in use at the present day as formerly; of 389 actions tried in the lord-mayor's court in London in seven years, from 1826 to 1832, 201 were cases of attachment; and in many instances very large sums have been recovered in this manner. In the sheriff's court the cases of attachment have not been so numerous. The form of procedure is this:—

The creditor, who is the plaintiff in the action, makes, in the first instance, an affidavit of his debt, which should be actually due, as it is doubtful whether an attachment can be made upon a contract to pay money at a future day. But it is not necessary that the debt should have been contracted within the jurisdiction. (5 Taunt. 232; 1 Brod. & Bing. 491.) The affidavit of debt having been made, an action is commenced in the usual manner; the only parties named in the first instance being the creditor as plaintiff, and the debtor as defendant. A warrant then issues, or is supposed to issue, to the officer of the court, requiring him to summon the defendant; upon this warrant the officer returns that the defendant "has nothing within the city whereby he can be summoned, nor is to be found within the same," and then the attachment may be made. This return of *non est inventus* to the process against the defendant is of the very essence of the custom, and without it all the subsequent proceedings on the attachment would be invalid; in point of fact, however, where an attachment is intended, the officer never attempts to summon the defendant, or gives him any notice of the action, but merely makes his return to the warrant as a matter of course. After this return, a suggestion is made, or supposed to be made, by the plaintiff to the court, that some third person within the city has goods of the defendant in his possession, or owes him debts, by which goods, or debts, the plaintiff requires that the defendant may be *attached*, until he appears to answer to the action brought against him. The attachment is then effected by a notice or warning served by the officer of the court upon the third party, who is called the garnishee, from an old French word *garnier*, or *garniser* (to warn), from whence *garnisé*, or vulgarly *garnishee* (the person warned), informing him that the goods, money, and effects of the defendant in his hands are attached to answer the plaintiff's action, and that the garnishee is not to part with them without the leave of the court. After this warning, the effect of which is to secure the property in the hands of the garnishee, the process again returns, or ought to return, to the defendant, who must be publicly called and make default on four successive court-days, before any further proceedings can be taken against his goods. In practice, however, no process is served upon the defendant either at this or any other stage of the proceeding; nor is he ever in fact called,—notice of the action or the attachment being, according to the present practice, never actually given to him. After the four court-days have elapsed, the garnishee may be summoned to show cause why judgment should not be given againt him for the goods or debt formerly attached in his hands. He then either appears and pleads, or he makes default; if he makes default, and the subject of the attachment is money, or a debt ascertained, the judgment of the court is final in the first instance, and execution may be issued at once for the sum demanded. But where the subject of the attachment is goods, a formal appraisement is made, under a precept from the court in which the action is pending, by two freemen, who are sworn for the purpose; and judgment is then given for the goods so appraised. It sometimes happens that the garnishee has removed the goods before appraisement; in which case the officer returns the fact to the court, and a jury is empannelled to inquire and assess the value of the goods removed; and thereupon judgment and execution follow for the sum so assessed. But before execution can in any case issue against the garnishee, the plaintiff is required to enter into a recognizance with two sureties, obliging himself to return the money or goods taken under the

attachment, if the *defendant* appears in court within a year and a day, and disproves or avoids the debt.

The above is the course of proceeding in the case of a judgment by default. Instead of following this course, however, the garnishee, who is commonly the banker, factor, or agent of the defendant, usually appears and pleads. As matter of defence, he may deny that any debt is due from himself to the defendant, or that he possesses any goods or money of his; he may also show that he has a lien upon the defendant's goods in his own right. The question thus raised between the plaintiff and the garnishee is then tried by a jury, and judgment is given upon their verdict, with or without appraisement, according to the nature of the property attached. According to the custom, the goods can never be actually seized in execution under the attachment; if the garnishee refuse to deliver them, the only remedy of the plaintiff is to arrest him. The practice in the matter of Foreign Attachment has been here stated generally; in practice many questions of law may arise.

A difference of opinion prevails amongst mercantile men with respect to the utility of this proceeding. On the one side, it is said to be important, in a commercial community, to be readily able to apply the property of an absent debtor, wherever it may be found, to the payment of his creditor; and this, it is contended, is particularly advantageous in a city much frequented by foreigners for the purpose of trade, who may contract debts during their abode in England, and then remove themselves to foreign parts, beyond the reach of personal process: on the other hand, it is supposed to embarrass commercial operations, in consequence of the enormous power which it places in the hands of creditors—a creditor for 20*l.* being entitled, if he pleases, to attach property to the amount of 20,000*l.*, or any larger sum, which cannot be applied in discharge of any commercial engagements which the debtor may have formed, until the attachment is disposed of. The apprehension of this process is said to deter foreign merchants from consigning cargoes to London. It does not, however, appear to be likely that the existence of this custom should, under ordinary circumstances, have the effect of deterring the fair merchant from sending his goods to London; though it may well happen that a trader, who has contracted debts in London which he does not intend to pay, or who suspects that claims will be set up which he does not wish to afford the claimants any facilities in litigating, would hesitate to send a cargo to a port where, by means of this process, his creditors in that place might instantly seize it. Nor can much practical inconvenience arise from the power of attaching a large property for a small debt; for the garnishee, who is almost in all cases the agent of the defendant in some shape or other, may at any time dissolve the attachment, by appearing for the defendant and putting in bail to the action; or, if satisfied with the truth of the debt upon which the attachment issues, he may pay the plaintiff's demand, and take credit for the amount in his account with the defendant: for a payment under an attachment would be so far an answer to any demand against the garnishee by the defendant. The alleged objections do not, therefore, appear to be so formidable as has been represented; but the advantage of a speedy and safe mode of recovering debts is obvious.

There are, however, many imperfections in this form of proceeding. In the first place, no costs are recoverable on either side; and therefore when a small debt is contested, if the plaintiff succeeds against the garnishee, his costs may exceed the sum which he can recover; and if the garnishee succeeds in showing himself not to be liable to the attachment, he may incur a considerable expense without the possibility of reimbursement. Secondly, the efficiency of the custom is much impeded by the limited extent of its local jurisdiction. Thus, goods in a warehouse in Thames-street may be attached; but if lying in a lighter on the river Thames within a yard of the warehouse, they are exempt. If a merchant keep his cash with a banker in the city, it is liable to the process; but if his banker dwell a few yards beyond the limits of the city, no attachment can be made of his balance—

unless indeed the plaintiff should prepare himself with process, and be fortunate enough to serve it upon one of the partners when accidentally within the jurisdiction; in which case, as he is supposed to carry with him all the debts and liabilities of the house to which he belongs, the balance of any customer of the firm might be attached. But the most serious objection to the proceeding, as universally practised in London at the present day, arises from the palpable opportunity which it affords for fraudulent collusion between the plaintiff and the garnishee, to the injury of the defendant. By the letter of the custom, as above stated, the defendant must be sought in the first instance by the officer of the court; and if not found in the city, and if he does not answer when openly called in court, the first process of attachment may issue against his goods. Still no step can be taken towards appropriating them until the defendant has been solemnly called at four several courts; and then, and not till then, the garnishee may be summoned. In ancient times, therefore, when the custom was strictly adhered to, every possible precaution was taken to give notice to the defendant of the intended proceeding against his property; and unless he was actually absent from the country (in which case he might, on his return within a year and a day, resort for his protection to the securities given by the plaintiff for restoring the goods), it was scarcely possible that he should not be informed of it. But the present practice is to give no notice of any kind to the defendant. The summons, the return of *non est inventus*, the four separate defaults on being called in court, are indeed entered formally upon the record; and unless they were so entered in every case, the judgment against the garnishee would be erroneous; for the custom would be contrary to law, if it sanctioned a proceeding against a man or his property without notice. But this principle is at present reduced to mere form, and there is in practice no protection whatever to the defendant against a fraudulent collusion between the garnishee and the plaintiff. It is quite within the range of possibility that a solvent defendant may reside next door to the garnishee with whom his goods are deposited; that the garnishee and plaintiff may agree to an attachment for a real or fictitious debt; that execution may issue; and even that the year and a day may expire, and consequently the property may be absolutely lost to the defendant before he has any notice of the transaction. This objection, however, applies not to the custom itself, which is in this respect just and reasonable, but to the abuse and corruption of it in modern practice.

ATTAINDER, from the Latin word *attinctus*, "attaint," "stained," is a consequence which the law of England has attached to the passing of sentence of death upon a criminal. Attainder does not follow upon mere conviction of a capital offence; because, after conviction, the judgment may still be arrested, and the conviction itself cancelled, or the prisoner may obtain a pardon: in either of which cases no attainder ensues. But as soon as sentence of death is passed, or a judgment of outlawry given, where the person accused flies from justice, which is equivalent to sentence of death, the prisoner becomes legally *attaint*, stained, or blackened in reputation. He cannot sue or be a witness in a court of justice; he loses all power over his property, and is rendered incapable of performing any of the duties, or enjoying any of the privileges, of a freeman. The person of a man attainted is, however, not absolutely at the disposal of the crown. It is so for the ends of public justice, but for no other purpose. Until execution, his creditors have an interest in his person for securing their debts; and he himself, as long as he lives, is under the protection of the law. (Macdonald's case, vol. xviii. of Howell's *State Trials*, p. 862.)

We shall consider, first, the subject of attainder as it exists by the ordinary laws of the realm; and, secondly, give some account of those extraordinary enactments commonly known by the name of Bills of Attainder.

1. The principal consequences of attainder, according to the ordinary course of law, are forfeiture of the attainted person's real and personal estates, and what is technically called corruption of the blood of the offender. The forfeiture of

the personal estate dates from the time of his conviction, but extends only to the goods and chattels of which he was actually possessed at that time. Real estate is not forfeited until attainder; but then the forfeiture (except in the case of attainder upon outlawry) has relation to the time when the offence was committed, so as to avoid all intermediate sales and incumbrances. (Co. Litt. 390 b.)

The extent and nature of the forfeiture of real estate upon attainder differ in the case of high treason, and in cases of murder or other felony. Attainder for high treason is followed by an immediate and absolute forfeiture to the crown of all freehold estates, whether of inheritance or otherwise, of which the person attainted was seised at the time of the treason committed. This consequence of attainder for high treason is said by Blackstone to be derived from Anglo-Saxon jurisprudence. Copyholds are forfeited to the lord of the manor upon the attainder of the tenant. Lands held in gavelkind are forfeited on attainder for high treason, but they are not subject to escheat for felony. (Robinson, *Gavelkind*, 2261.)

By stat. 5 & 6 Edw. VI. cap. 11, the dower of the widow of a person attainted for high-treason is also forfeited. But as there is no forfeiture unless an actual attainder takes place, if a traitor dies before judgment, or is killed in open rebellion, or is put to death by martial law, his lands are not forfeited, unless a special act of parliament is passed for the purpose. It is said, however (*Reports*, iv. 57), that if the chief justice of England in person, upon the view of the body of one killed in open rebellion, records the facts and returns the record into the court of King's Bench, both the lands and the goods of the rebel shall be forfeited.

This forfeiture of the estates of persons convicted of high treason was often productive of extreme hardship, by making their families, who were no parties to their crimes, participate in their punishment. In certain modern treasons, therefore, relating to the coin, created by statute, it is expressly provided that they shall work no forfeiture of lands, except for the life of the offender, and that they shall not deprive his widow of her dower. (Stat. 5 Eliz. c. 11; 18 Eliz. c. 1; 8 & 9 Will. III. c. 26; 15 & 16 Geo. II. c. 28.)

In cases of attainder for murder or other felony, the forfeiture of lands to the crown does not extend for a longer term than a year and a day, with an unlimited power of committing waste upon the lands during that period. This is called in our old law-books "*The King's year, day, and waste.*" After the expiration of this term, the lands would descend to the heir of the person attainted, if the feudal law of escheat for corruption of blood did not intervene, and vest them in the lord of whom they are holden. In order to understand the doctrine of escheat for corruption of blood, we must remember that, by the feudal law, from which our modern law of real property is chiefly derived, all lands were, or were supposed to be, held by gift from a superior lord, subject to certain services and conditions, upon neglect or breach of which (as well as upon failure of issue of the grantee) the lands reverted, or in feudal language escheated, that is, fell to the original giver. Now, by the attainder of a tenant in fee-simple for felony, the compact between him and his lord was totally dissolved; his blood was supposed to be corrupted, and he was disabled not only from inheriting lands himself, but from transmitting them to his descendants. Even though he had no lands in possession at the time of the attainder, and acquired none afterwards upon which the law of forfeiture could operate, the law of escheat might operate after his death to the prejudice of his descendants. For, owing to the corruption of his blood, which was considered to stop the course of descent, it was impossible to derive a title to any lands, either from him directly or from a more remote ancestor through him. The legal consequence of this doctrine was an escheat to the lord. As most lands in England at present are held of the king as the feudal superior, he is generally the sole party interested in the estates of attainted persons. We may be apt to confound forfeiture with escheat, unless we illustrate the difference between them by some familiar instance of their respective operations according to the law as it formerly stood. Thus (to take the

instance cited by Blackstone from Coke (*Comm.* ii. p. 253), if a father were seised in fee-simple, and his son committed treason and were attainted, upon the death of the father the lands escheated to the lord, because the son by the corruption of his blood was incapable of being heir, and there could be no other heir during his life: but nothing was forfeited to the king, for the son never had any interest in the lands to forfeit.

The hardship caused by the doctrine of the corruption of blood in punishing the offences of the guilty by a heavy punishment upon the innocent, has frequently attracted the attention of the legislature; though, until lately, little has been done towards permanently remedying the evil. The 1 Edw. VI. c. 12, § 17, enacted that attainder of treason, petit-treason, misprision of treason, and murder, or any felony, should not deprive the wife of her dower; but 5 & 6 Edw. VI. c. 11, § 13, restored the old law in the case of all treasons, and therefore a wife loses her dower in case her husband is attainted of any treason. But it has been usual, where a new felony has been created by act of parliament, to make an express provision that it shall not extend to corruption of blood. By the stat. 7 Anne, c. 21 (the operation of which was deferred by 17 Geo. II. c. 39), it was enacted that, after the death of the Pretender and his sons, no attainder for treason should extend to the disinheriting any heir, nor the prejudice of any person other than the offender. But, both these statutes being repealed by 39 Geo. III. c. 93, the ancient law of forfeiture for treason was restored. By 54 Geo. III. c. 145, corruption of blood was taken away for attainder, except in cases of treason, petit-treason (that is, where a wife has murdered her husband, a servant his master, or an ecclesiastic his superior), and other murders. By the act of 3 & 4 Wm. IV. c. 106, which relates to descent, it is enacted, § 10, "That when the person from whom the descent of any land is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person from inheriting such land who would have been capable of inheriting the same, by tracing his descent through such relation, if he had not been attainted, unless such land shall have escheated before the 1st day of January, 1834." By another clause of this act, descent is always to be traced from the purchaser, that is, from the person who has acquired the land in some other way than by descent, and the last owner shall be considered to be the purchaser, unless it can be proved that he inherited the same, in which case the descent must be traced till we arrive at a person as to whom it cannot be proved that he inherited. In this act the word descent means the title to inherit land by reason of consanguinity, as well when the heir shall be an ancestor or collateral relation, as when he shall be a child or other issue. By this act, if a man's son should be attainted, and should die before lands descend to him, the son of such son would be enabled to inherit the lands, which was not the case formerly.

A dignity descendible to the heirs general is forfeited to the crown both for treason and for felony. An entailed dignity is forfeited for treason, but not for felony. Thus Lawrence, Earl Ferrers, whose peerage was limited to the heirs male of the body of his ancestor, being attainted for murder in the reign of George II., was succeeded by Washington, Earl Ferrers, his next brother. (Cruise, *Real Property*, lib. iv. sec. 64, 72, 73.)

The corruption of blood produced by attainder cannot be effectually removed except by an act of parliament. "The king," says Blackstone (vol. ii. p. 254), "may excuse the public punishment of an offender. He may remit a forfeiture in which the interest of the crown is alone concerned; but he cannot wipe away the corruption of blood; for therein a third person hath an interest, the lord, who claims by escheat." But it appears from the same author (vol. iv. p. 402) that the king's pardon is so far effectual after an attainder, that it imparts new inheritable blood to the person attainted, so that his children born after the pardon may inherit from him.

2. Besides the modes of attainder by

the common law, as above described, there have been frequent instances in the History of England of attainders by express legislative enactment, called Bills of Attainder. This has happened when, either from the extraordinary nature of the offence, or from unforeseen obstacles to the execution of the ordinary laws, it has been thought necessary to have recourse to the supreme power of parliament, for the purpose of punishing particular offences. These enactments, either in the shape of bills of attainder or bills of pains and penalties, have been made at intervals from an early period of our history, down to very recent times. The justice as well as the policy of these *ex post facto* laws has been often questioned; and they have generally occurred in times of turbulence or of arbitrary government; but the number of them is sufficiently large to form a formidable list of precedents. There were some instances of them under the Plantagenet princes, as the bills of attainder against Roger Mortimer and Edmund, Earl of Arundel, in the reign of Edward III. Both of these, however, were reversed in the same reign. It was not till the reign of Henry VIII., which was fertile in new crimes and extraordinary punishments, that the proceeding by bill of attainder became so common as almost to supersede trials according to the ordinary process of law. Scarcely a year passed without persons of the highest rank being brought to the scaffold by bill of attainder. Among them were the Earl of Surrey, Cromwell, Earl of Essex, who is said to have been the adviser of these measures, and most of those persons who suffered for denying the king's supremacy. All these persons were attainted upon mere hearsay evidence; and some not only upon no evidence at all, but without being heard in their defence. In the following reign of Edward VI., the Protector Somerset encouraged a bill of attainder for treason against his brother Lord Seymour of Sudley, the Lord High Admiral of England and husband of the Queen Dowager Catherine Parr, which was hurried through both houses of parliament without the accused being permitted to say anything in his defence. But as the nation became better acquainted with the principles of constitutional freedom, parliamentary attainders became less frequent. Under the Stuarts recourse was seldom had to this extraordinary mode of proceeding. It was thought necessary to adopt it in the time of James I. with respect to Catesby, Percy, and several other persons, who were killed in the insurrection that ensued upon the discovery of the Gunpowder Plot, or died before they could be brought to trial, as they, not having been tried, could not have been attainted by the ordinary process of law. It was again adopted by the Long Parliament in Lord Strafford's case, on the ground that he was an extraordinary criminal, who would have escaped with little punishment if no other penalties than those of the existing laws had been inflicted on him. But even Lord Strafford's attainder was reversed after the restoration of Charles II., and all the records of the proceedings cancelled by act of parliament. The Duke of Monmouth, also, on his appearing openly in arms against the government in 1685, was attainted by statute. A remarkable instance of a proceeding by bill of attainder occurred in the case of Sir John Fenwick, who, in the year 1696, was attainted for a conspiracy to assassinate William III. There is no question that Sir John Fenwick might have been tried by the ordinary process of law. The excuse urged for resorting to a bill of attainder was, that there was no moral doubt of Fenwick's guilt; but that as two witnesses were required by the stat. 7 Will. III. cap. 3, in order to convict him; and as one of them had been tampered with and removed out of the kingdom, a legal proof of an overt act of treason became impossible.

The effect of this bill of attainder was, therefore, to suspend the statute of 7 Will. III. c. 3, before it had been two years in operation, in order to destroy an individual. This exertion of legislative power did not take place without a strong opposition, and has been frequently reprobated in subsequent times. Bishop Burnet, one of its most strenuous supporters, allowed that "this extreme way of proceeding was to be put in practice but

seldom, and upon great occasions." (Howell's *State Trials*, vol. xii.)

The legislature, acting in conformity with this opinion, have seldom, since the accession of the House of Hanover, had recourse either to bills of attainder or bills of pains and penalties. Bishop Atterbury, however, was deprived of all his offices and emoluments, declared incapable of holding any for the future, and banished for ever, by a bill of pains and penalties, which received the assent of George I. on the 27th of May, 1723. He was charged with carrying on a traitorous correspondence in order to raise an insurrection in the kingdom and procure foreign power to invade it. It was by a bill of pains and penalties that proceedings were taken against Queen Caroline, the wife of George IV., in 1820. During the Irish Rebellion, in 1798, Lord Edward Fitzgerald was arrested on a charge of high treason, and dying in prison, before he could be brought to trial, of the wounds which he had received in resisting his apprehension, he was attainted by act of parliament. But when the violence of party-spirit had subsided, the old principle of the constitution, that every man shall be considered innocent of a crime until his guilt has been legally proved, prevailed, and a few years ago the attainder was reversed.

The proceedings in parliament, in passing bills of attainder and of pains and penalties, do not vary from those adopted in regard to other bills. They may be introduced into either house. The parties who are subjected to these proceedings are admitted to defend themselves by counsel and witnesses. Bills for reversing attainders are "first signed by the king, and are presented by a lord to the House of Peers, by command of the crown, after which they pass through the ordinary stages in both houses, and receive the royal assent in the usual form." (May's *Parliament*.)

ATTAINT. [JURY.]

ATTORNEY is a person substituted (*atourné, attornatus*), from *atourner, attornare*, to substitute, and signifies one put in the place or *turn* of another to manage his concerns. He is either a private attorney, authorised to make contracts, and do other acts for his principal, by an instrument called a letter of attorney; or he is an attorney at law, practising in the several courts of common law. The latter description only will be treated of under this head.

An attorney at law answers to the *procurator*, or proctor, of the civil and canon law, and of our ecclesiastical courts. Before the statute 13 Edward I. c. 10, suitors could not appear in court by attorney without the king's special warrant, but were compelled to appear in person, as is still the practice in criminal cases. The authority given by that statute to prosecute or defend by attorney formed the attorneys into a regular body, and so greatly increased their number, that several statutes and rules of court for their regulation, and for limiting their number, were passed in the reigns of Henry IV., Henry VI., and Elizabeth: one of which, the 33 Henry VI. c. 7, states, that not long before there were only six or eight attorneys in Norfolk and Suffolk, "*quo tempore magna tranquillitas regnabat*," when things were very quiet; but that their increase to twenty-four was to the vexation and prejudice of the counties; and it therefore enacts, that for the future there shall be only six in Norfolk, six in Suffolk, and two in Norwich—a provision which is still unrepealed, though fallen into disuse. It will be convenient to consider:—

1st. The admission of attorneys to practise, their enrolment, and their certificates.

2nd. Their duties, functions, privileges, and disabilities.

3rd. The consequences of their misbehaviour.

4th. Their remedy for recovering their fees, &c.

1. *The admission of attorneys to practise, their enrolment, and certificates.*—The earlier regulations as to the admission of an attorney (3 Jac. I. c. 7, § 2, and rules of courts in 8 Car. I., and 1654) required that he should serve for five years as clerk to some judge, serjeant, counsel, attorney, or officer of court; that he should be found, on examination by appointed practisers, of good ability and honesty; and that he should be admitted

of, and reside in, some inn of court or chancery, and keep commons there. These were superseded by the 2 Geo. II. c. 23, § 5, which provided that no person should practise as an attorney in the superior courts unless he had been bound by contract in writing to serve for five years as clerk to a regular attorney, and had continued five years in such service, and had been afterwards examined, sworn, admitted, and enrolled in manner in the act mentioned, under penalty of 50*l.* and an incapacity to sue for his fees. This provision is, by subsequent statutes, extended to practising in the county court or the quarter-sessions; and by 34 Geo. III. c. 14, § 4, any person practising as an attorney without due admission and enrolment shall forfeit 100*l.* and be disabled from suing for his fees. The 1 & 2 Geo. IV. c. 48, and 3 Geo. IV. c. 16, are repealed, except as to Ireland, but the following provisions are re-enacted in the new act respecting attorneys (6 & 7 Vict. c. 73), with the addition of Durham and London to the other universities: persons having taken the degree of bachelor of arts or bachelor of law, in the university of Oxford, Cambridge, or Dublin [also Durham and London], and having served under contract in writing for *three* years with an attorney, and having been actually employed during the three years by such attorney or his agent in the business of an attorney, shall be qualified to be admitted as fully as if they had served five years; provided the degree of bachelor of arts was taken within six years after matriculation, and the degree of bachelor of law was taken within eight years after matriculation: the binding to the attorney must also be within four years after the taking of the degree. By the 22 Geo. II. c. 46, which is now repealed so far as relates to attorneys and solicitors, an affidavit was required to be made, within three months from the date of the articles of the execution thereof, by the attorney and by the clerk, which affidavit was to be filed in the court where the attorney was enrolled, and be read in open court before the clerk was admitted and enrolled an attorney. Acts of indemnity were, however, occasionally passed, relieving persons who had neglected to file their affidavits within the limited time. By the last general stamp act, a duty of 120*l.* is imposed upon the articles of clerkship of attorney, and 1*l.* 15*s.* on the counterpart; and by 34 Geo. III. c. 14, § 2, the articles, duly stamped, were to be enrolled or registered with the proper officer in that court where the party proposes to practise as an attorney. No attorney is allowed, either by former acts or the one now in force, to have more than two articled clerks at once, and these only during such time as he is actually in practice on his own account, and not at any time during which he himself is employed as clerk by another attorney. The clerk, in order to be admitted an attorney, must actually serve five years under his articles, unless he has taken a degree; but by 6 & 7 Vict., in case the attorney dies, or discontinues to practise, or the articles are by mutual consent cancelled, then the clerk may serve the residue of the time under articles to any other practising attorney, and the new articles are not subject to stamp-duty. The articled clerk may serve one year, but not a longer time, with the agent of the attorney to whom he is articled: a plan generally adopted by country clerks, who thus acquire a year's experience of the practice in London, without delaying their admission: and by the 1 & 2 Geo. IV. c. 48, § 2, now repealed, an articled clerk who became *bonâ fide* a pupil to a barrister or certificated special pleader, for one whole year, might be admitted in the same manner as was done if he had served one year with the agent of the attorney to whom he was bound. Under 6 & 7 Vict. he may now serve one year with the London agent, and also one year with a barrister or special pleader, leaving three years only to spend with the attorney to whom he was articled.

Formerly, before the clerk could be admitted an attorney, an affidavit was required of the actual service under the articles, sworn by himself or the attorney with whom he had served, to be filed in the court to which he sought admission; he also made oath (or affirmation, if a Quaker) that he had duly paid the stamp duty on the articles, and that he would truly and honestly demean himself as an attorney; and he then took the oaths of

allegiance and supremacy, and subscribed the declaration against popery, or, if a Roman Catholic, the declaration and oath prescribed by the 31 Geo. III. c. 32, § 1. After paying a stamp-duty on his admission of 25*l.*, his name was enrolled, without fee, by the officer of court, in books appointed for the purpose, to which books all persons had free access without payment of any fee. When the attorney was admitted, he subscribed a roll, which was the original roll of attorneys, which the court held as the recorded list of its officers, and from which the names were copied into the books.

An attorney, duly sworn, admitted, and enrolled in any of the superior courts of law, may be sworn and admitted in the High Court of Chancery without fee or stamp duty; and may practise in bankruptcy and in all inferior courts of equity; and so a solicitor in any court of equity at Westminster may be sworn, admitted, and enrolled an attorney of her Majesty's courts of law; and an attorney in a superior court at Westminster is capable of practising in all the other courts on signing the other rolls. An attorney admitted in one court of record at Westminster may, by the consent in writing of any other attorney of another court, practise in the name of such other attorney in such other court, though not himself admitted in such court. But if any sworn attorney knowingly permit any other person, not being a sworn attorney of another court, to practise in his name, he is disabled from acting as an attorney, and his admittance becomes void.

In addition to swearing, admission, and enrolment, an attorney, in order to be duly qualified for practice, must take out a certificate at the Stamp-office every year between the 15th November and 16th December for the year following, the duty on which is 12*l.* if he reside in London or Westminster, or within the delivery of the twopenny post, or within the city of Edinburgh, and has been in practice three years; or 6*l.* if he has been admitted a less time; and if he resides elsewhere, and has been admitted three years, 8*l.*; or if he has not been admitted so long, 4*l.*; and if he practise without certificate, or without payment of the proper duty, he is liable to a penalty of 50*l.* and an incapacity to sue for his fees. Acts of indemnity are occasionally passed to relieve attorneys who have neglected to take out their certificates in due time. The omission by an attorney to take out his certificate for one whole year formerly incapacitated him from practising, and rendered his admission void; but the courts had power to re-admit him on payment of the arrears of certificate duty, and such penalty as the courts thought fit. (37 Geo. III. c. 90.) This part of the act is repealed by 6 & 7 Vict.

The following are the most important provisions of 6 & 7 Vict. c. 73. This act was passed in 1843, and consolidates and amends several of the laws relating to attorneys and solicitors practising in England and Wales. It repealed wholly or in great part thirty-two acts, but the provisions of fifty-eight other acts are retained either wholly or in part. The admission of attorneys is now entirely regulated by this act. No person is to be admitted an attorney or solicitor unless he shall have served a clerkship of five years (unless he has taken a degree) to a practising attorney in England and Wales; and have undergone an examination, § 3. No attorney is to have more than two clerks at one time, or to take or retain any clerk after discontinuing business, or whilst clerk to another. A person bound for five years may serve one year with a barrister or special pleader, and one year with a London Agent. § 6. Within six months after a person is articled, the attorney or solicitor to whom he is bound must make affidavit of his being a duly enrolled practitioner, with various particulars which are to be enrolled, § 8; and if not filed within six months, the period of clerkship will only be reckoned from the day of filing, § 9. Before the clerk can be admitted an attorney he must make an affidavit of having duly served; and the judges or any judge of the courts of Queen's Bench, Common Pleas, and Exchequer, may, before issuing a fiat for admission, direct an examination by examiners whom they shall appoint, and in such way as they think proper, touching

the articles and service, and the fitness and capacity of such person to act as an attorney. The Master of the Rolls, before admitting any person as a solicitor, is to adopt the same course of procedure. If the clerk is found duly qualified on examination, the oath of allegiance is administered, and an oath to the following effect:—"I, A. B., do swear (or solemnly affirm) that I will truly and honestly demean myself in the practice of an attorney (or solicitor, as the case may be) according to the best of my knowledge and ability. So help me God." The masters of the several courts of law at Westminster, or such other persons as the Lord Chief Justices and Lord Chief Baron shall appoint, are the proper persons under the act for filing affidavits of the execution of clerkship, and for having the care of the rolls of names. The Incorporated Law Society is appointed as registrar of attorneys and solicitors; and an alphabetical book or books is kept of all attorneys and solicitors, and it is the duty of the society as registrar to issue certificates of persons who have been admitted and enrolled, and are entitled to take out stamped certificates authorising them to practise as attorneys and solicitors. The Commissioners of Stamps are not to grant any certificate until the registrar has certified that the person applying is entitled thereto, and the commisioners are to deliver all such certificates yearly to the registrar, with the date of granting the certificate.

The examination of clerks, previous to admission as attorneys and solicitors, takes place at the Institution belonging to the Incorporated Law Society in Chancery Lane, in each term. Printed questions to the number of eighty or ninety are previously prepared. Four of these are preliminary, the third and fourth requiring a statement as to what law-books the clerk has read and studied, and what law-lectures he has attended. The other questions are arranged under the following heads: 1. Common and Statute Law and Practice of the Courts. 2. Conveyancing. 3. Equity and Practice of the Courts. 4. Bankruptcy and Practice of the Courts. 5. Criminal Law and Proceedings before Justices of the Peace.

2. *The duties, functions, privileges, and disabilities of attorneys.*—The principal duties of an attorney are care, skill, and integrity; and if he be not deficient in these essential requisites, he is not responsible for mere error or mistake in the exercise of his profession. But if he be deficient of proper skill or care, and a loss thereby arises to his client, he is liable to a special action on the case; as, if the attorney neglect on the trial to procure the attendance of a material witness; or if he neglect attending an arbitrator to whom his client's cause is referred; or if he omit to charge a defendant in custody at the suit of his client, in execution within the proper time. When an attorney has once undertaken a cause, he cannot withdraw from it at his pleasure; and though he is not bound to proceed if his client neglect to supply him with money to meet the necessary disbursements, yet before an attorney can abandon the cause on the ground of want of funds, he must give a sufficient and reasonable notice to the client of his intention. When deeds or writings come to an attorney's hands in the way of his business as an attorney, the court, on motion, will make a rule upon him to deliver them back to the party on payment of what is due to him on account of professional services and disbursements, and particularly when he has given an undertaking to re-deliver them; but, unless they come to his hands strictly in his business as an attorney, the court will not make a rule, but leave the party to bring his action against the attorney.

An attorney duly enrolled and certificated is considered to be always personally present in court, and on that account has still some privileges, though they are now much narrowed. Till lately he was entitled to sue by a peculiar process, called an attachment of privilege, and to be sued in his own court by bill; but the late act for uniformity of process, 2 Will. IV. c. 39, has abolished these distinctions, and an attorney now sues and is sued like other persons. By reason of the supposed necessity for his presence in court, an attorney is exempt from offices requiring personal service, as the

of sheriff, constable, overseer of the poor, and also from serving as a juror. These privileges, being allowed not so much for the benefit of attorneys as of their clients, are confined to attorneys who practise, or at least have practised within a year.

An attorney is also subjected to some disabilities and restrictions. No attorney practising in the King's Courts could formerly be under-sheriff, sheriff's clerk, receiver, or sheriff's bailiff; but that part of the act (1 Hen. V. c. 4) which related to under-sheriffs is repealed by 6 & 7 Vict. By rule of Michaelmas Term, 1654, no attorney can be a lessee in ejectment, or bail for a defendant in any action. By 5 Geo. II. c. 18, § 2, no attorney can be a justice of the peace while in practise as an attorney; and this clause is not repealed by 6 & 7 Vict., but there is an exception in favour of justices in any city or town being a county of itself, or to any city, town, cinque port, &c. having justices within their respective limits. No practising attorney can be a Commissioner of the Land Tax without possessing 100*l.* per annum. By 12 Geo. II. c. 13, which is repealed by 6 & 7 Vict., no attorney who was a prisoner in any prison, or within the rules or liberties thereof, could sue out any process, or commence or prosecute any suit, under penalty of being struck off the roll, and incapacitated from acting as an attorney for the future; and the punishment was the same for any attorney who suffered an attorney in prison to prosecute a suit in his name; but an attorney in prison might carry on suits commenced before his confinement; and the statute did not prohibit his defending, but only his prosecuting suits.

3. *The consequences of an attorney's misbehaviour.*—The court which has admitted an attorney to practise treats him as one of its officers, and exercises a summary jurisdiction over him, either for the benefit of his clients or for his own punishment in case of misconduct. If he is charged on affidavit with fraud or malpractice, contrary to justice and common honesty, the court will call upon him to answer the matters of the affidavit; and if he do not distinctly deny the charges imputed to him, or if he swear to an incredible story in disproof of them, the court will grant an attachment. If the misconduct of the attorney amount to an indictable offence, the courts will in general leave him to be indicted by the party complaining, and will not call upon him to answer the matters of an affidavit. If the attorney has been fraudulently admitted, or has been convicted of felony, or any other offence which renders him unfit to practise, or if he has knowingly suffered his name to be used by a person unqualified to practise, or if he has himself acted as agent for such a person, or if he has signed a fictitious name to a demurrer purporting to be the signature of a barrister, or otherwise grossly misbehaved himself, the court will order him to be struck off the roll of attorneys. But striking off the roll is not a perpetual disability: for in some instances the court will permit him to be restored, considering the punishment in the light of a suspension only. An attorney may procure his name to be struck off the roll, on his own application; which is done when an attorney intends to be called to the bar. But it is necessary for him to accompany his application with an affidavit to the effect that he does not make the application in order to prevent any other person making it against him.

4. *The attorney's remedy for recovering his fees.*—An attorney may recover his fees from his client in an action of debt or *indebitatus assumpsit*, which he may maintain for business done in other courts as well as in that of which he is admitted an attorney. But an attorney cannot recover for conducting a suit in which, owing to gross negligence or other cause, the client has had no benefit whatever from the attorney's superintendence. The 2 Geo. II. c. 23, is repealed, but § 23 is preserved in the new act, which provides that no attorney shall sue for the recovery of his fees or disbursements till the expiration of one lunar month after he has delivered to his client a bill of such fees or disbursements, written in a legible hand, and subscribed with his own hand; and on application of the party chargeable, by such bill, the court, or a judge or baron of the court in which the business is done, may refer the bill to be taxed by the proper officer; and if

the attorney, or party chargeable, shall refuse to attend such taxation, the officer may tax the bill *ex parte*, pending which reference and taxation no action shall be commenced for the demand; and on the taxation and settlement of the bill, the party shall pay to the attorney, or as the court shall direct, the whole sum due on the bill, or be liable to attachment or process of contempt; and if it is found that the attorney has been overpaid, then he shall forthwith refund. The statute only applies to fees and disbursements for business done in a court of law or equity. If the whole bill were for conveyancing, it could not formerly be taxed, but conveyancing costs may be taxed under 6 & 7 Vict.: if any part of the bill be for business done in court, the bill must be delivered a month before the action is brought, or the attorney cannot recover, in which case *all* the items are taxed: under 6 & 7 Vict. the judge may authorize an action before the expiration of the month. Many nice distinctions have been drawn as to what transactions of an attorney constitute business done in a court so as to render his bill subject to taxation. For these we must refer to Tidd's *Practice*, tit. "Attorneys."

To assist an attorney in recovering his costs, he has a *lien* for the amount of his bill upon the deeds and papers of his client which have come to his hands in the course of his professional employment; and, till his bill be paid, the court will not order them to be delivered up, nor can an action be maintained for them. The attorney has also the same *lien* on any money recovered by his client which comes to his hands in the character of his attorney. As a further security to the attorney, his client is not permitted to discharge him and substitute another without obtaining the leave of the court or a judge's order for that purpose, which is never granted except upon the terms of paying the first attorney's bill. See Rule, 2 Will. IV. reg. 1, § 93. (Bac. *Abridgment*, tit. "Attorney," 7th edition; Tidd's *Practice*, 9th edition, chaps. iii. and xiv.)

ATTORNEY-GENERAL. The attorney-general is a ministerial officer of the crown, specially appointed by letters-patent. He is the attorney for the king, and stands in precisely the same relation to him that every other attorney does to his employer. The addition of the term "general" to the name of the office probably took place in order to distinguish him from attorneys appointed to act for the crown in particular courts, such as the attorney for the Court of Wards, or the master of the Crown Office, whose official name is "coroner and attorney for the king" in the Court of King's Bench. By degrees the office, which has usually been filled by persons of the highest eminence in the profession of the law, has become one of great dignity and importance. The duties of the attorney-general are to exhibit informations and conduct prosecutions for such heinous misdemeanours as tend to disturb or endanger the state; to advise the heads of the various departments of government on legal questions; to conduct all suits and prosecutions relating to the collection of the public revenue of the crown; to file informations in the Exchequer, in order to obtain satisfaction for any injury committed in the lands or other possessions of the crown; to institute and conduct suits for the protection of charitable endowments, in which the king is entitled to interfere; and generally to appear in all legal proceedings and in all courts where the interests of the crown are in question.

The precise rank and precedence of the attorney-general have frequently been the subject of discussion and dispute. Indeed the early history and origin of this office, upon which the question of precedence in a great measure depends, is matter of great obscurity. There is no doubt that at all times the king must have had an attorney to represent the interests of the crown in the several courts of justice; but in early times he was probably not an officer of such high rank and importance as the attorney-general of the present day. There are no traces of such an officer till some centuries after the Conquest; and it is clear that, until a comparatively late period, the king's serjeant was the chief executive officer for pleas of the crown. (Spelman, *Gloss.* tit. "Serviens ad legem.") In the

old form of proclamation upon the arraignment of a criminal, the king's serjeant was, till very lately, always named before the attorney-general; and previously to the Commonwealth he invariably spoke before him in all criminal prosecutions, and performed the duty of "opening the pleadings," which since the Commonwealth has always been done by the junior counsel. In the reign of James I. a curious altercation between Sir Francis Bacon, who was then attorney-general, and a serjeant-at-law, upon this subject, is related in Bulstrode's 'Reports,' vol. iii. p. 32, upon which occasion Lord Coke, who was then chief justice, said that "no serjeant ought to move before the king's attorney, when he moves for the king; but for other motions any serjeant-at-law is to move before him." He added, that when "he was the king's attorney, he never offered to move before a serjeant, unles sit was for the king."

All questions respecting the precedency of the attorney-general and the serjeants were terminated by a special warrant of King George IV., when Prince Regent, in the year 1811, by which it was arranged that the attorney-general and the solicitor-general should have place and audience at the head of the English bar.

A discussion arose during the session of parliament 1834, at the hearing of a Scotch appeal in the House of Lords, upon the question of precedency between the attorney-general and the lord advocate of Scotland, which was finally decided in favour of the former.

AUBAINE, the name of the prerogative by which the kings of France formerly claimed the property of a stranger who died within their kingdom, not having been naturalized. It also extended to the property of a foreigner who had been naturalized, if he died without a will, and had not left an heir; as likewise to the succession to any remaining property of a person who had been invested with the privileges of a native subject, but who had quitted, and established himself in a foreign country. (Merlin, *Répertoire de Jurisprudence*, tom. i. p. 523.) It is called, in the French laws, the *Droit d'Aubaine*. Authors have varied as to its etymology. Nicot (*Thresor de la Langue Françoise, tant ancienne que moderne*, fol. Paris, 1606) says it was anciently written Hobaine, from the verb *hober*, which signifies to remove from one place to another; Cujacius (*Opera*, fol. Neap. 1758, tom. ix. col. 1719) derives the word from *advena*, a foreigner or stranger; and Du Cange (*Glossar.* v. "Aubain") from *Albanus*, the name formerly given to the Scotch, who were great travellers. Ménage (*Dict. Etym.* fol. Paris, 1694) says, some have derived the word from the Latin *alibi natus*, a person born elsewhere, which seems the best explanation. (See also Walafridus Strabo, *De Vitâ S. Galli*, l. ii. c. 47.)

This practice of confiscating the effects of strangers upon their death is mentioned, though obscurely, in one of the laws of Charlemagne, A.D. 813. (*Capitularia Regum Francorum*, curante P. de Chiniac, fol. Paris, 1780, col. 507, § 6.)

The Droit d'Aubaine was originally a seignorial right in the provinces of France. Brussel, in his *Nouvel Examen de l'Usage général des Fiefs en France pendant le* xi., *le* xii., *le* xiii., *et le* xiv. *Siècle*, 4to. Paris, 1727, tom. ii. p. 944, has an express chapter, "Des Aubains," in which he shows that the barons of France, more particularly in the twelfth century, exercised this right upon their lands. He especially instances Raoul, Comte de Vermandois, A.D. 1151.

Subsequently, however, it was annexed to the crown only, inasmuch as the king alone could give the exemption from it, by granting letters of naturalization.

Various edicts, declarations, and letters-patent relating to the Droit d'Aubaine, between the years 1301 and 1702, are referred to in the 'Dictionnaire Universel de Justice' of M. Chasles, 2 tom. fol. Paris, 1725; others, to the latest time, are given or referred to in the 'Code Diplomatique des Aubains,' par J. B. Gaschon, 8vo. Paris, 1818. The Duc de Levis, in his speech in the Chamber of Peers, when proposing its final abolition, 14th of April, 1818, mentioned St. Louis as the first King of France who had relaxed the severity of the law (compare *Etablissemens de S. Louis*, l. i. c. 3), and Louis le Hutin as having abolished it entirely

in 1315 (compare the *Recueil des Ordonnances du Louvre*, tom. i. p. 610), but, as it turned out, for his own reign only. Exemption from the operation of the Droit d'Aubaine was granted in 1364 by Charles V. in favour of persons born within the states of the Roman Church. Louis XI., in 1472, granted a similar exemption to strangers dwelling at Toulouse; and Francis I., in 1543, to strangers resident in Dauphiné. Charles IX., in 1569, allowed exemption from it to merchant-strangers frequenting the fairs at Lyon. Henry IV., in 1608, granted exemption to the subjects of the republic of Geneva. Louis XIV., in 1702, to the subjects of the Duke of Lorraine. (Chasles, *Dict.* tom. i. pp. 265, 267.) The Swiss and the Scotch of the king's guard had been exempted by King Henry II. (Bacquet, *Traité de Droit d'Aubaine*, p. i. c. 7.)

Partial exemptions from the Droit d'Aubaine were frequently conventional, and formed clauses in treaties, which stipulated for reciprocal relief to the subjects of the contracting parties; these exemptions, it is probable, continued no longer than the peace which the treaty had procured, and some related to moveable goods only.

In the treaty of commerce between England and France, in 1606, the *Jus Albinatûs*, as it is termed, was to be abandoned as related to the English: "Ita ut in posterum aliquo modo jure Albinatûs fisco addici non possint." (Rym. *Fœd.* tom. xvi. p. 650.) Letters-patent of Louis XIV., in 1669, confirmed in the parliament of Grenoble in 1674, exempted the Savoyards; and this exemption was confirmed by the treaty of Utrecht, in 1713. The inhabitants of the Catholic cantons of Switzerland were exempted by treaty in 1715. The particulars of numerous other conventional treaties are recorded in M. Gaschon's work, in the speech of the Duc de Levis already referred to, and in the 'Rapport' from the Marquis de Clermont-Tonnerre to the French Chamber of Peers, printed in the 'Moniteur' for 1819, pp. 96-98.

Louis XV. granted exemptions, first to Denmark and Sweden; then, in the treaty called the "Family Compact," to Spain and Naples; to Austria, in 1766; to Bavaria, in 1768; to the noblesse of Franconia, Suabia, and the Upper and Lower Rhine, in 1769; to the Protestant Cantons of Switzerland, in 1771; and to Holland, in 1773. In Louis XVI.'s reign, other treaties of the same kind were made with Saxony, Poland, Portugal, and the United States. The abolition of the Aubaine, as it related to Russia, was a distinct article of another treaty; and, finally, by letters-patent, dated January, 1787, its abolition was pronounced in favour of the subjects of Great Britain.

The National Assembly, by laws dated August 6, 1790, and April 13, 1791 (confirmed by a constitutional act, 3rd of September, 1791), abolished the Droit d'Aubaine entirely. It was nevertheless re-established in 1804. (*Moniteur* for 1818, p. 551.) The treaty of Paris, 30th of April, 1814, confirmed the exemptions from the Aubaine as far as they were acknowledged in existing treaties. The final abolition of the Droit d'Aubaine, as already mentioned, was proposed by the Duc de Levis, April 14, 1818, and passed into a law, July 14, 1819, which confirmed the laws of 1790 and 1791. Foreigners can now hold lands in France by as firm a tenure as native subjects.

The Droit d'Aubaine was occasionally relaxed, by the kings of France, upon minor considerations. In the very early part of the 14th century, an exemption was obtained by the University of Paris for its students, as an encouragement to their increasing numbers. Charles V. granted the privilege in 1364 to such Castilian mariners as wished to trade with France. In 1366 he extended it to Italian merchants who traded to Nismes. The fairs of Champagne were encouraged in the same manner; and exemptions to traders were also granted by Charles VIII. and Louis XI. Francis I. granted the exemption to foreigners who served in his army; Henry IV. to those who drained the marshes or worked in the tapestry-looms. Louis XIV. extended the exemption to the particular manufacturers who worked at Beauvais and the Gobelins; then to the glass-

manufacturers who had come from Venice; in 1662, to the Dunkirkers, whose town he had acquired by purchase from England; and, lastly, to strangers settled at Marseille, that city having become the entrepôt of products from the Levant.

Ambassadors and persons in their suite were not subject to the Droit d'Aubaine; nor did it affect persons accidentally passing through the country.

That the Droit d'Aubaine existed in Italy, in the papal states, in the eleventh, twelfth, and thirteenth centuries, seems established by Muratori, 'Antiq. Ital. Medii Ævi,' fol. Mediol. 1739, tom. ii. col. 14.

An extensive treatise on the Droit d'Aubaine has been already quoted in the works of Jean Bacquet, avocat de Roi en la Chambre de Thresor, fol. Paris, 1665. See also 'Mémoires du Droit d'Aubaine,' at the end of M. Dupuy's 'Traitez touchant le Droits du Roy très-Chrestien,' fol. Par. 1655; and the 'Coutumes du Balliage de Vitry en Perthois,' par Estienne Durand, fol. Châlons, 1722, p. 254. But the most comprehensive view of this law, in all its bearings, will be found in the 'Répertoire Universel et Raisonné de Jurisprudence,' par M. Merlin, 4to. Paris, 1827, tom. i. p. 523, art. "Aubaine;" tom. vii. p. 416, art. "Heritier." The *Moniteurs* of 1818 and 1819 contain abstracts of the discussions while the abolition was passing through the two Chambers at Paris. See the latter year, pp. 314, 315, 509, 510, 728, 729. The chief passages in the former year have been already quoted.

AUCTION, a method employed for the sale of various descriptions of property. This practice originated with the Romans, who gave it the descriptive name of *auctio*, an increase, because the property was publicly sold to him who would offer most for it. In more modern times a different method of sale has been sometimes adopted, to which the name of auction is equally, although not so correctly applied. This latter method, which is called a Dutch auction, thus indicating the local origin of the practice, consists in the public offer of property at a price beyond its value, and then gradually lowering or diminishing that price until some one consents to become the purchaser. An auction is defined by 19 Geo. III. c. 56, § 3, and 42 Geo. III. c. 93, § 3, to be "a sale of any estate, goods, or effects whatever, by outcry, knocking down of hammer, by candle, by lot, by parcel, or by any other mode of sale at auction, or whereby the highest bidder is deemed to be the purchaser." According to the revenue laws, every auction at which property is put up and bidden for is a "sale," so as to raise the charge of duty, without regard to the subsequent completion of the purchase by the delivering possession or actual transfer of the thing sold. There must, however, be an actual competition as to price, or biddings, or an invitation made to a competition of biddings, and if a single bidding is made the liability to pay auction duty is incurred.

The sale by auction was used by the Romans for the disposal of military spoils, and was conducted *sub hastâ*, that is, under a spear, which was stuck into the ground upon the occasion. This expression was continued, and sales were declared to be conducted *sub hastâ* in cases where other property was sold by auction, and probably after the spear was dispensed with. The phrase "asta pubblica" is still used by the Italians to signify a public sale or auction: the expression is, "vendere all' asta pubblica," or "vendere per subasta." The auctio transferred to the purchaser the Quiritarian ownership of the thing that he bought.

At the present day persons are sometimes invited to a "sale by the candle," or "by the inch of candle." The origin of this expression arose from the employment of candles as the means of measuring time, it being declared that no one lot of goods should continue to be offered to the biddings of the persons who were present for a longer time than would suffice for the burning of one inch of candle; as soon as the candle had wasted to that extent, the then highest bidder was declared to be the purchaser.

In sales by auction, the assent of the buyer is given by his bidding, while the assent of the seller is signified by the fall of the auctioneer's hammer;

and until this declaration has been made, the bidder is at liberty to withdraw his bidding.

It is a common practice for the owner of property offered for sale by auction to reserve to himself the privilege of bidding, and, as it is termed, buying in his goods, if the price offered by others should not suit him. As late as the time of Lord Mansfield, private biddings at auctions were considered to be illegal. In the present day, however, they are not only allowed by the law, but the legislature has so far recognised the propriety of the practice, that in cases where the property has been bought in either by the proprietor or by his declared agent, who is in general the auctioneer, no auction duty is chargeable; but if bought in by the owner personally, he must do so openly, and if bought in by an agent, he must do so by authority of a written notice. When a buyer-in afterwards becomes a purchaser, the transaction is narrowly looked after by the officers of the revenue, and the auctioneer's bond is liable to be put in suit if the auction duty has been fraudulently evaded.

It has been laid down that the buyer of goods at an auction cannot be held to the performance of his contract in cases where he was the only *bonâ fide* bidder at the sale, and where public notice was not given of the intention of the owner of the goods to bid, even though his agent was authorized to bid only to a certain sum. This rule is intended to act as a protection to purchasers against the practice commonly resorted to by disreputable auctioneers, of employing persons to make mock biddings with the view of raising the price by their apparent competition: the persons thus employed are aptly called *puffers*. In many large towns, and more especially in London, many persons make a trade of holding auctions of inferior and ill-made goods; persons called *barkers* are generally placed by them at the door to invite strangers to enter, and puffers are always employed, who bid more for the articles than they are worth, and thus entice the unwary. Many ineffectual attempts have been made to put a stop to these practices.

The auctioneer is considered the agent of both parties, vendor and purchaser. In the language of the judges in a late case, "a bidder, by his silence when the hammer falls, confers an authority on the auctioneer to execute the contract on his behalf." He can therefore bind the parties by his signature according to the requisition of the Statute of Frauds, which renders it necessary in contracts of sale of "lands or any interest in or concerning them," and of goods above the value of 10*l.*, and that some "note or memorandum should be signed by the parties or their agents lawfully authorized." Such signature is now held sufficient even in an action brought by the auctioneer against the vendor in his own name. It has been doubted therefore, whether a bidder may not retract (in cases within the statute) at any time before the actual written entry. The auctioneer also stands in the situation of a stakeholder of the deposited part of the purchase-money, which he is not at liberty to part with till the sale has been carried into effect; and he cannot, at least after notice, discharge himself by paying over the amount to the vendor. It has been settled by a late decision that he is not liable for any interest on, or advantage which he may make from, the money in his hands. In this respect his situation differs from that of a mere agent, and also from that of one of the contracting parties (the vendor), from whom "interest is recoverable in the nature of damages for a breach of the original contract on the part of the vendor, by whose failure to make a good title the vendee has for a time lost the use of his money." (Mr. Justice James Parke.) An auctioneer (like any other agent and trustee concerned in the sale of property) is forbidden to buy on his own account; and when he sells without disclosing the name of his principal, an action will lie against himself for damages on the breach of contract.

The conditions of sale constitute the terms of the bargain, and purchasers are bound to take notice of them. The late Lord Ellenborough said that "a little more fairness on the part of auctioneers in framing particulars would avoid many inconveniences. There is always either

a suppression of the fair description of the premises, or something stated which does not belong to them; and in favour of justice, considering how little knowledge the parties have of the thing sold, much more particularity and fairness might be expected." The conditions usually contain a provision that "any error or mis-statement shall not vitiate the sale, but that an allowance shall be made for it in the purchase-money." But this clause is held only to guard against unintentional errors, and not to compel a purchaser to complete the contract if he has been designedly misled.

The duties levied upon goods sold by public auction are not charged according to any uniform scale. Sheep's wool of British growth, sold for the benefit of the growers, or of persons who have purchased directly from the growers, is subject to an auction-duty of twopence for every twenty shillings of the purchase-money. (55 Geo. III. c. 142.) This duty produced less than 20*l.* in the whole of the United Kingdom, in 1842. Freehold, copyhold, or leasehold estates, whether in land or buildings; shares in the joint-stock of corporate or chartered companies; reversionary interest in any of the public funds; and ships or vessels—are liable to pay sevenpence for every twenty shillings: household furniture, horses, carriages, pictures, books, and the like kinds of personal property, are made to pay one shilling for every twenty shillings of the purchase-money. (45 Geo. III. c. 30.) Bonds granted under a local paving act, and charged upon certain premises, have been held to be an interest in land, and as such subject to the lower rate of duty. Upon this principle dock-bonds, gas-work shares, railroad shares, canal shares, bridge shares, shares in a news-room or library, pews in a church or chapel, policies, bonds, and other securities which create or convey any interest in land, tenements, or hereditaments, are charged only with the lower duty of sevenpence in the pound. (Bateman *On the Excise*, p. 332, ed. 1843.) Many exceptions have been made by the legislature when imposing these duties. "Piece-goods, wove or fabricated in this kingdom, which shall be sold entire in the piece or quantity, as taken from the loom, and in lots of the price of twenty pounds and upwards," are exempted from the payment of duty. (29 Geo. III. c. 63.)

The produce of the whale and seal fisheries enjoys an equal exemption, as well as elephants' teeth, palm-oil, drugs, and other articles for the use of dyers: also mahogany and other woods used by cabinet-makers, and all goods imported by way of merchandise from any British colony in America, the same being of the growth, produce, or manufacture of such colony, and sold by the original importer within twelve months from the time of importation. Neither is any duty chargeable upon property sold by order of the courts of Chancery or Exchequer; nor on any sale made by the East India or Hudson's Bay Company; nor by order of the Commissioners of Customs, Excise, or other government boards of commissioners. In like manner, sales made by the sheriff for the benefit of creditors in execution of judgment, and bankrupts' effects sold by assignees, are not held liable to the payment of auction-duty; which last species of exemptions is made upon the principle of not aggravating their losses to innocent sufferers. Goods distrained for non-payment of tithes are also exempt. For the same reason, goods damaged by fire, or wrecked or stranded, which are sold for the benefit of insurers, are not charged with duty. Wood, coppice, the produce of mines or quarries, cattle, corn, stock or produce of land, may be sold by auction free of duty while they continue on the lands producing the same. The exemption only extends to the unmanufactured produce of land, and does not include cheese, butter, flour, &c.; and the stock of a nurseryman would be liable to the duty, the exemption being confined strictly to agricultural produce. By virtue of a Treasury warrant issued in 1822, auction-duty is not charged on the sale of property of foreign ministers to the court of Great Britain on their leaving England. The effects of officers and soldiers dying in her Majesty's service may be sold by auction by a non-commissioned officer or soldier, without incurring auction-duty; and in 1839 this exemption was extended to the effects of deserters.

In case the sale of an estate be declared void, through defect of title, the duty that has been paid may be claimed again within three months after the time when the defect has been discovered.

It is very common to stipulate that the buyer shall pay the amount of duty in addition to the sums bid by him.

The duty on sales by auction in Great Britain was first imposed during the American war, in 1777 (17 Geo. III. c. 50), and in Ireland in 1797. In the last twenty years the amount of goods sold in the United Kingdom on which auction-duty was charged has varied from 10,148,571*l.* in 1825, to 6,326,481*l.* in 1831; and the amount of the duty has been as high as 328,833*l.* and as low as 218,084*l.* In 1840 the duty was 320,058*l.* charged on sales amounting to 8,720,985*l.* In 1841 the duty amounted to 314,067*l.*; 296,964*l.* in 1842, and 284,916*l.* in 1843. In 1842 it appears, from a table in M'Culloch's Dictionary, that the duty arose from the several articles enumerated below:—

	England.	Scotland.	Ireland.
	£	£	£
On estates, houses, annuities, ships, plate, jewels, &c.	101,536	5,067	6,727
Household furniture, horses, carriages, and other goods & chattels	155,839	14,697	10,124
Sheep's wool....	17	2	under 1
Foreign produce (first sale thereof)	2865	74	11
	260,259	19,841	16,863

During the sitting of the Commissioners of Excise Inquiry they were waited upon by seven of the most eminent auctioneers in London, who represented that the duty of sevenpence in the pound, equivalent to three per cent. on the amount of the purchase-money, had for some time past caused a rapid and universal decrease in the number of actual sales by auction. One auctioneer stated that, in consequence of all sales of property in Chancery being exempt from auction-duty, "many bills are filed in the Court of Chancery, when the property is large, for no other purpose than saving the auction-duty, notwithstanding the great amount of law expenses." Another of the deputation complained of the duty as "an unequal, oppressive, and impolitic tax," and suggested that instead thereof "there should be an additional ad valorem duty of one per cent. upon all transfers of real property, conveyed by deed or written instrument, whether sold by auction or private contract." The Commissioners in their report (twelfth) state that the auction-duty is open to great objections, and should be "wholly repealed as soon as practicable." They conceive that this impolitic tax has been "borne with patience solely in consequence of the exemptions, either direct or indirect, which the more powerful interests of the country, manufacturing and agricultural, have succeeded in obtaining from its operation." The auction-duty still exists, and the various recommendations of the Commissioners respecting it have not yet been carried into effect.

The Romans imposed taxes on the produce of certain sales, and it may be presumed on all such sales, whether public or private. In the time of Augustus (Dion Cassius, lv. 31), a tax of two per cent. was imposed on the produce of sales of slaves. This tax is spoken of by Tacitus (*Ann.* xiii. 31) as being then a tax of four per cent. (if the reading is right). In the time of Nero it was enacted that the seller should pay the tax, from which it may be inferred that the buyer had hitherto paid it. The buyers of slaves were generally Romans, and the sellers were foreign dealers. This change in the mode of paying the duty was called a remission of the tax, but as Tacitus observes, it was a remission in name, not in effect, for the tax was still paid by the purchaser in the shape of a higher price. After the civil wars, and during the time of Augustus, a tax of one per cent. was imposed on the produce of sales by auction at Rome. In the time of Tiberius the tax was reduced to one-half per cent. (Tacit., *Ann.* i. 78, ii. 42); but after the death of Sejanus it was again raised to one per cent. Caligula (Suetonius, *Calig.* 16) remitted the tax again, by first reducing it to one-half per cent., and then remitting it altogether. (Dion Cassius, lviii. 16, and the note of Reimarus.)

AUCTIONEER, a person whose pro-

fession or business it is to conduct sales by auction. It is his duty, previously to the commencement of every sale, to state the conditions under which the property is offered; to receive the respective biddings; and to declare the termination of the sale: for this purpose, he commonly makes use of a hammer, upon the falling of which the biddings are closed.

It is a legal implication that an auctioneer is authorized by the highest bidder or purchaser to sign for him the contract of sale, and the fact of the auctioneer's writing down in his book the name of such purchaser is sufficient to bind the purchaser, provided no objection be made by him previous to such entry. An auctioneer can also act as the agent of persons wishing to purchase, who may intrust him to make biddings for them. The auctioneer thus being the agent of both parties, his signature of the buyer's name in the catalogue to which the conditions of sale are annexed, opposite to the lot purchased, together with the price bid, has been considered a sufficient note or memorandum in writing of the bargain within the Statute of Frauds; but where the conditions of sale are not annexed to the catalogue, nor expressly referred to by it, the signature of the buyer's name in the catalogue is not a compliance with the statute.

Every person acting as an auctioneer in the United Kingdom is required by 6 Geo. IV. c. 81, to take out a licence, which must be renewed on the 5th of July in every year, and for this licence the charge of five pounds is annually made. The penalty for selling by auction without licence cannot be evaded by putting down the biddings on paper, &c., it having been decided that any mode of sale whereby the highest bidder is deemed the purchaser renders a licence necessary. Distinct licences must be taken out for selling various kinds of property, amounting in all to 30*l.* The London auctioneers would prefer one general licence of 10*l.* An auctioneer must also enter into a bond with sufficient sureties to deliver to the officers of Excise, within a certain period, a true and particular account of every sale held by him, and to pay the amount of auction-duty accruing thereon. For this purpose, twenty-eight days are allowed, within the limits of the chief office of Excise in London, and six weeks beyond those limits. The auctioneers complain of the inconvenience to their sureties of having their bonds renewed annually. The bonds of auctioneers in London are for 1000*l.*, and two sureties of 200*l.* each; and the bond required from auctioneers in the country is one of 500*l.* and two sureties of 50*l.* each.

An auctioneer intending to hold a sale within the limits of the chief office of Excise in London must give two days' notice thereof at the said office. If the sale is to be held beyond those limits, three days' notice must be given to the collector of Excise, at the nearest Excise-office. Wrecked vessels and their cargo may be sold at any place after only twenty-four hours' notice; but the circumstance must be specially reported to the Board of Excise. (*Board Order*, 1822.) Green or perishable fruit may also be sold at the port of importation on one day's notice, but not without a catalogue. (*Order*, 1833.) Imported goods may also be sold at the port of importation after a like notice. (*Treasury Warrant*, 1834.) These official regulations are from Bateman *On the Excise*, ed. 1843. The notices here mentioned must be in writing, and signed by the auctioneer, and must specify the particular day when such sale is to be held. It is further obligatory upon him to deliver in a written or printed catalogue, likewise attested by his signature, or by that of his authorized clerk, enumerating every lot and article intended to be offered at such auction. The Commissioners of Excise Inquiry recommended that notices of sales in towns should be restricted to one day; and that books, approved by the Excise, should be kept by the auctioneer for the entry of all sales, and signed by his employer, in substitution of the catalogues now furnished to the Excise. At present, in case of books being returned as imperfect and the property being put up a second time, the duty is chargeable on both sales. He is liable by law for the amount of the auction-duty, but may recover the same from the vendor. "The auctioneer acts for the government, both as the assessor

and the collector of the tax; and that it is in a great measure upon his personal agency and co-operation that the receipt of the revenue arising from it must depend, is a circumstance which seems unavoidable, but which forms a decided objection to the principle of this duty." (*Twelfth Report of Commissioners of Excise Inquiry.*)

If an auctioneer declines or omits at the time of sale to disclose the name of his employer, he makes himself responsible toward the buyers for all matters in regard to which the responsibility would otherwise lie with the owner of the property sold. He is also responsible to his employer for any loss or damage that may be sustained through his carelessness or want of attention to the instructions given; and if by his gross negligence the sale becomes nugatory, he can recover no remuneration for his services from his employer. If he receives money as a deposit on the sale of an estate, and, knowing that there is a defect in the title, pays that deposit over to his employer, he is answerable for the amount to the purchaser; and if he pay over the produce of a sale to his employer after receiving notice that the goods belong to another, the real owner may recover the value from the auctioneer.

The number of auctioneers' licences issued in England in 1840 was 3101; in Scotland, 394; and in Ireland, 303: total 3828; which cost 20,080*l.* 15*s.* A uniform payment of 10*l.* would be more productive, but it would press hardly on auctioneers in many parts of the country.

The word Auctioneer is the English form of the Latin "auctionarius," which signified anything pertaining to an auction: the "atria auctionaria" were the rooms in which auctions took place. The "tabulæ auctionariæ" contained the particulars of sale. Roman sales of public property were conducted by the magistrates, as the censors, ædiles, quæstors, according to circumstances. Private auctions, such as sales of a man's property, either in his lifetime or on his decease, were conducted by bankers (argentarii), or by a person who was called "magister auctionis." Notice of the sale and other particulars were given by notices (tabulæ, album) or by a crier (præco). The præco or crier seems to have acted the part of the modern auctioneer so far as calling out the biddings and other matters that required bawling. The argentarius or magister entered the sales in a book. On the whole, a Roman auction was very like an English auction.

AU'DITOR is the Latin word Audítor, which simply means "a hearer." The use of the word to signify one who examines into the accounts and evidences of expenditure has probably not been long established. The word "audit," as in the phrase to "audit accounts," and the "audit," in the sense of the examining of accounts and settlement of them, are also new.

The Auditors of the Imprest were ancient officers of the Exchequer, abolished in 1785, when "commissioners for auditing the public accounts" were appointed by 25 Geo. III. c. 52. Ten of these commissioners were appointed by 46 Geo. III, c. 141: the number is now six. Two of them are empowered by 1 & 2 Geo. IV, c. 121, § 17, to examine persons on oath, and to do all acts concerning the audit of public accounts. The Audit-Office, at Somerset-House, where this business is transacted, is immediately under the control of the Lords of the Treasury, who make such orders and regulations for conducting the business as they think fit.

The office of auditor, under the Poor-Law Amendment Act (4 & 5 Wm. IV, c. 75), if properly constituted, would be one of much higher importance than it has hitherto been. "The qualifications required in an auditor, beyond those of independence and impartiality, are of such a nature as to render it impossible to procure many efficient officers of the description required. A mere knowledge of accounts is only a small part of the requisite accomplishments. It is necessary that he should have a complete knowledge of the statutes and authorities by which the expenditure of the poor-rates is regulated, and of the Poor-Law Commissioners' rules, orders, and regulations, and be able to make sound and legal inferences from these authorities, so as to determine their effect in special cases. Some acquaintance with the law of contracts is necessary, and, above all,

a large experience of the nature of the pecuniary transactions of the guardians, overseers, and other accountable officers, without which it is impossible for him to exercise his important function of ascertaining, as he is bound to do in every case, the reasonableness of every item." (*Report of the Poor-Law Commissioners on the Continuance of the Commission*, p. 82.) The appointment of auditor is vested in the Board of Guardians, a rule inconsistent with sound principle, as the operations of the auditor are intended as a check upon the administration of the guardians. In 1837 a Select Committee of the House of Commons agreed to a resolution recommending that the Commissioners should have power to appoint district auditors, on the ground that the existing system was open to great abuse. The Commissioners had authority to combine unions for the appointment of auditors under § 46 of the Amendment Act; but though this gave a chance of persons being appointed less subject to local influence, it was difficult to ensure the combination of different Boards of Guardians. Assistant Poor-Law Commissioners also acted in some cases as auditors, but without salary.

Under the act passed in 1844 for the further amendment of the poor law, the Poor-Law Commissioners are empowered to combine parishes and unions into districts for the audit of accounts. (7 & 8 Vict. § 32.) The district auditor is to be elected by the chairman and vice-chairman of the different boards of the district, and his salary and duties are to be regulated by the Poor-Law Commissioners. By § 37 the powers of justices of the peace are to cease in the district for which an auditor is appointed.

Auditors are annually elected by the burgesses, under the Municipal Corporations Act (5 & 6 Wm. IV. c. 76, § 37), two for each borough. They audit the borough accounts half-yearly, and must not be members of the council. The mayor appoints a councillor to act with the auditors.

AUGMENTATION, COURT OF. This was a court established by 27 Hen. VIII. c. 27, for managing the revenues and possessions of all monasteries under 200*l.* a year, which by an act of the same session had been given to the king, and for determining suits relating thereto. The court was to be called "the Court of the Augmentations of the Revenues of the King's Crown," and was to be a court of record with one great seal and one privy seal. The officers of the court were, a chancellor, who had the great seal, a treasurer, a king's attorney and a king's solicitor, ten auditors, seventeen receivers, with clerk, usher, &c. The oaths of the different officers are given in § 4 of the act. All the dissolved monasteries under the above value, except those preserved incorporately, were in survey of the court, and the chancellor of the court was directed to make a yearly report of their revenues to the king. The annual revenue of 376 monasteries under 200*l.* a year, which were suppressed, was 32,000*l.*, and the value of their goods, chattels, plate, &c. was estimated at 100,000*l.*

The records of the Court of Augmentation are now at the Augmentation-Office in Palace-Yard, Westminster, and may be searched on payment of a fee.

AULIC COUNCIL was instituted by the Emperor Maximilian I., in 1500. Towards the close of the 15th century, the progress of the Turks alarmed the princes of Germany, and led them to feel more strongly than ever the necessity of sacrificing their petty quarrels, and of uniting in order to resist the common enemy. Accordingly, when the emperor assembled the Diet of Worms in 1495, and proposed a levy against the Turks, he was answered, that it was first requisite to restore internal concord, and that the establishment of a high court of justice for the settlement of all differences was the first step towards such union. The Imperial Chamber was accordingly instituted in 1496, as the high court of justice of the empire, the right of private war being at the same time abolished. It was to consist of one judge of princely rank, and of sixteen assessors, holding their office independent of any power. This tribunal was first fixed at Frankfort, then at Worms, at Nürnberg, and lastly at Spires: it was modified after the peace of Westphalia, and the number of judges

was greatly increased, one half being Protestants.

Not contented with thus organizing a federal judicature, the German princes, who then aimed at establishing constitutional rights, demanded of Maximilian a permanent council or senate, composed partly of members of the diet, who should govern the empire during the frequent absence of the emperor. Maximilian answered indirectly, that he had no objection to appoint a Hofrath, or court council, consisting of such noble and prudent men as he should select, who should perform the duties alluded to by the diet. The latter assembly, nevertheless, persisted, and succeeded for the time in their plan, carrying the point of having a federal senate, called the Regiment, or Reichs Regiment. Maximilian, on his part, founded what he had promised—a hofrath, at Vienna in 1500. By degrees this purely Austrian institution rose on the ruins both of the Imperial Chamber and the Regiment, till it almost superseded the former, and altogether the latter. The Hofrath is the Aulic Council. Its rise at the time that the federal institution declined or perished, marks the simultaneous elevation of the house of Austria over the old and independent spirit of the German confederation.

The judicial functions reserved for the Aulic Council were :—1. All feudal causes; 2. All cases of privilege or reserve in which the emperor was personally concerned; 3. All Italian causes. The merely civil and German cases were referred to the Imperial Chamber. But the Austrian princes made use of the Aulic Council in other than judicial functions. It was with them not only a court of appeal, but a political council, which was called upon to give the monarch advice in weighty matters, more especially of legislation. It thus corresponded with the French Grand Conseil, or Conseil d'Etat. Charles V. modified considerably the Aulic Council, extended its jurisdiction to Italy and the Netherlands, filled it with foreign members, and altered its forms of procedure. But Ferdinand, his successor, hearkening to the complaints of his subjects against these innovations, rendered the court once more purely German, expelled foreign judges, and restored the ancient forms. It was finally regulated by Ferdinand III. in an edict, issued in 1654, subsequent to the treaty of Westphalia and the admission of Protestants to share in all the privileges and functions of the empire.

At the extinction of the German empire by the renunciation of Francis II. in 1806, and the establishment of the Confederation of the Rhine under the protection of the Emperor Napoleon, the Aulic Council ceased to exist. There is, however, an Aulic Council at Vienna for the affairs of the war department of the Austrian empire; it is called *Hofkriegsrath*, and consists of twenty-five councillors. The members also of the various boards or chancellories of state for the affairs of Bohemia, Hungary, and Transylvania, Italy, and Gallicia, are styled Aulic Councillors, but are inferior in rank to the councillors of state, of which latter two sit at the head of each board. (*Austria as it is*, London, 1827.)

AUXI'LIA. [AIDS.]

AVERAGE is a quantity intermediate to a number of other quantities, so that the sum total of its excesses above those which are less, is equal to the sum total of its defects from those which are greater. Or, the average is the quantity which will remain in each of a number of lots, if we take from one and add to another till all have the same; it being supposed that there is no fund to increase any one lot, except what comes from the reduction of others. Thus, 7 is the average of 2, 3, 4, 6, 13, and 14; for the sum of the excesses of 7 above 2, 3, 4, and 6—that is, the sum of 5, 4, 3, and 1—is 13; and the sum of the defects of 7 from 13 and 14—that is, the sum of 6 and 7—is also 13. Similarly, the average of 6 and 7 is $6\frac{1}{2}$. To find the average of any number of quantities, *add them all together, and divide by the number of quantities.* Thus, in the preceding question, add together 2, 3, 4, 6, 13, and 14, which gives 42; divide by the number of them, or 6, which gives 7, the average.

It must be remembered that the average of a set of averages is not the average of the whole, unless there are equal numbers of quantities in each set averaged. This

will be seen by taking the average of the whole, without having recourse to the partial averages. For instance, if 10 men have on the average 100*l.*, and 50 other men have on the average 300*l.*, the average sum possessed by each individual is not the average of 100*l.* and 300*l.*; for the 10 men have among them 1000*l.*, and the 50 men have among them 15,000*l.*, being 16,000*l.* in all. This, divided into 60 parts, gives 266*l.* 13*s.* 4*d.* to each. A neglect of this remark might lead to erroneous estimates; as, for instance, if a harvest were called good because an average bushel of its corn was better than that of another, without taking into account the number of bushels of the two.

The average quantity is a valuable common-sense test of the goodness or badness of any particular lot, but only when there is a perfect similarity of circumstances in the things compared. For instance, no one would think of calling a tree well grown because it gave more timber than the average of all trees; but if any particular tree, say an oak, yielded more timber than the average of all oaks of the same age, it would be called good, because if every oak gave the same, the quantity of oak timber would be greater than it is. It must also be remembered that the value of the average, in the information which it gives, diminishes as the quantities averaged vary more from each other.

AVERAGE, in Marine Insurance. If any part of the ship or furniture, or of the goods, is sacrificed for the sake of saving the rest, all parties interested must contribute towards the loss. This contribution is properly called "Average." It is sometimes called general average, in opposition to special or particular average, which is the contribution towards any kind of partial damage or loss, or gross average, in opposition to petty average, which is the contribution mentioned in the bill of lading towards the sums paid for beaconage, towage, &c.

The principle of average is recognised in the maritime law of all nations. It was introduced into the civil law from the law of Rhodes (*Dig.* 14, tit. 2, "Lex Rhodia de Jactu;" and the Commentary of Peckius, 'In tit. *Dig. et Cod.* "Ad Rem Nauticam pertinentes" '). In order to constitute such a loss as is the subject of average, it must be incurred by design: the masts must be cut away, or the goods thrown overboard; and this must be done for the sake of saving the rest, as in the case of throwing goods overboard to keep the vessel from sinking or striking on a rock, or to lighten her that she may escape from an enemy, or of cutting away a mast or a cable to escape the perils of the storm. The necessary consequences of these acts are also the subjects of average; as where, in order to throw some goods overboard, others or some parts of the ship are damaged; or where it becomes necessary, in order to avoid the danger or repair the injuries caused by a storm or the enemy, to take goods out of the ship, and they are in consequence lost. The expenses also incurred in these operations are equally the subject of average. But the injuries incurred by a ship during an engagement with the enemy, or from the elements in consequence of measures taken to escape from an enemy, are not of such a nature as to fall within the definition. If goods are laden on deck, no average is recoverable in respect of the loss occasioned by throwing them overboard, unless by the usage of trade such goods are usually so laden. If a ship is voluntarily stranded for the purpose of saving her and the goods, and afterwards gets off safely, the expenses incurred by the stranding are the subject of general contribution; but if the ship be wrecked in consequence of the voluntary stranding, the wrecking, not being voluntary, is therefore not such a loss as calls for a general contribution. If, in consequence of such an injury done to a ship as would be the subject of average, she is compelled to go into port to repair, the necessary expenses incurred in refitting her, so as to enable her to prosecute her voyage, and the amount of wages, port-dues, and provisions expended to accomplish that object, are also the subject of average; and if the master is unable to obtain the money necessary by any other means than by the sale of a part of the cargo, the loss caused to the merchant upon such sale is also the subject of average. If, in consequence of the sacrifice made, the

ship escape the danger which immediately threatens her, but is afterwards wrecked or captured, and the remaining goods, or part of them, are saved or recaptured, these are bound to contribute average towards the loss in the first instance incurred, in proportion to their net value in the hands of the merchant after all expenses of salvage, &c. have been paid.

The things upon which average is payable are, the ship, boats, furniture, &c., but not provisions or ammunition; also all merchandise, to whomsoever belonging, which is on board for the purposes of traffic, but not the covering, apparel, jewels, &c. of parties on board for their own private use. The freight due at the end of the voyage is also subject to average. The goods are to be valued at the price for which they would have sold at their place of destination. If the ship, by reason of what happened when the average was incurred, return to her port of lading, and the average is there settled, the goods are to be valued at the invoice price. The losses incurred by the ship and furniture, &c. are calculated at two-thirds of the price of the new articles rendered necessary to be purchased. The usages of other countries as to all matters connected with average differ in some respects both from those of each other and those of this country. Where the average has been adjusted according to the established law and usage of the country in which the adjustment was made, it is binding upon all the parties to it, unless there be some special contract between them which provides otherwise. [ADJUSTMENT.]

AVOCAT, a French word, derived from the Latin *advocatus*, and corresponding to the English 'counsellor at law.' [ADVOCATE.] From the middle of the fourteenth century the avocats were distinguished into 'avocats plaidans,' who answer to our barristers, and 'avocats consultans,' called also 'juris-consultes,' a kind of chamber-counsel, who do not plead in court, but give their opinion on intricate points of law. Previous to the Revolution the advocates of Dijon, Grenoble, the Lyonnais, Ferez, and Beaujolais were entitled to rank as nobles; in some places this order was freed from the demands of the farmers of the king's taxes. Before 1600 the advocates of Grenoble enjoyed a transmissible nobility; but this privilege was subsequently contested; and in 1756 or 1757 the privileges of the forty gentlemen of whom the order consisted were limited to the *droit de chasse comme les nobles même sans avoir fiefs*. ('Foreign Quarterly Review,' No. 66, p. 352.) Under the old monarchy the avocats were classed, with regard to professional rank, into various categories, such as 'avocats au conseil,' who conducted and pleaded causes brought before the king's council; they were seventy in number, were appointed by the chancellor, and were considered as attached to the king's court; and 'avocats généraux,' who pleaded before the parliaments, and other superior courts, in all causes in which the king, the church, communities, and minors were interested. At first the 'avocats généraux' were styled 'avocats du roi,' and the other barristers who pleaded in private causes were called 'avocats généraux,' but towards the end of the seventeenth or the beginning of the eighteenth century these appellations were changed, the 'avocats du roi' were styled 'avocats généraux,' and three of them were appointed to each superior court, while the counsel who filled the same office before the inferior courts assumed the name of 'avocats du roi.' 'Avocat fiscal' was a law-officer in a ducal or other seignorial court of justice, answering to the avocat du roi in a royal court. The order of advocates was suppressed by a decree of the 11th September, 1790. The persons who performed the functions of counsel were then termed *hommes de loi*, and any one might act as counsel. Out of six hundred of the ancient advocates, scarcely fifty, it is said, attended the tribunals during the violent period of the Revolution. In 1795 something was done by the French Directory to re-organize the bar, and in December, 1810, another step was taken in the same direction. The Emperor Napoleon had a great aversion to the bar, and when the Legion of Honour was established not a single advocate received the decoration; but they were more favourably treated under the Restoration. In 1827, on the trial of a Neapolitan

priest for a brutal assault on an infant of tender years, the president ordered the bar to leave the court.

At present there are in France 'avocats au conseil du roi,' as formerly; 'avocats généraux,' of whom there are five at the Court of Cassation, or Supreme Court, four at the Cour Royale of Paris, besides substitutes, and two or three at each Cour Royale in the departments. The practising barristers are classed into 'avocats à la Cour de Cassation,' who are fifty in number, and who conduct exclusively all causes before that court; and 'avocats à la Cour Royale,' who plead before the various royal courts. All avocats must be bachelors at law, and must have taken the oath before the Cour Royale. There is a roll of the advocates practising in each court. Candidates are admitted by the Council of Discipline after a probationary term. The members of the Council are elected by the advocates inscribed on the roll. The 'avoués' (attorneys) also plead when the number of advocates is not sufficient for the despatch of business. (*Code des Avocats; Code des Officiers Ministériels; Histoire de l'Ordre des Avocats*, par Bouchier d'Argis.)

AVOIRDUPOIS. [WEIGHTS AND MEASURES.]

AYUNTAMIENTO, JUSTICIA, CONCEJO, CABILDO, REGIMIENTO, are the names given in Spain to the councils of the towns and villages. These councils are in general composed of the corregidor, alcalde, regidores, jurados, and personeros, or hombres-buenos. All these officers, with the exception of the corregidor, who was always appointed by the government, were originally elected every year by the inhabitants of the concejo or commune. To be the head of a family, a native of Spain, and settled in the commune, were the only qualifications required either from an elector or a candidate. The origin of this institution may be traced to the remotest period of Spanish history. (Masdeu, *Historia Critica*, vols. iv. to ix., more particularly vol. viii. book 3, pp. 33-49.) It existed in the Peninsula under the Romans; and under the Goths it was called the Council of the Præpositus or Villicus—a political and military governor appointed by the king. The individuals who formed the council were called priores or seniores. In the eleventh and twelfth centuries, the territories which the cruel and devastating wars between the Christians and the Moors had deprived of inhabitants, were again peopled, and the kings of Leon and Castile granted particular *fueros*, or charters, by which many great privileges were bestowed on such as chose to settle in these new colonies. The colonists acknowledged the king as their only lord, and bound themselves by a solemn oath to observe all the laws contained in the fuero, and to pay a certain tribute to the king, called Moneda-Forera, or charter-money. The king likewise was bound by an oath to maintain faithfully all the privileges granted in the fuero, not to defraud the concejo or any of its inhabitants of their property, and to keep them under his protection. Every man in the concejo was a soldier, and was bound to arm himself and to follow the pennon of his alcalde, when legally summoned to the defence of the concejo or of his country. In some of these concejos the king appointed an officer who had the political and military command in the commune, collected the revenues, and watched over the observance of the fuero; but this officer had neither voice nor vote in the ayuntamiento, and was in every other respect subject to the authority of the concejo. These officers were called domini, dominantes, and also seniores. The administration of justice, the levying of taxes, raising of troops, and all the interior policy of the concejo, devolved upon the ayuntamiento. The members of this body were chosen every year by ballot, by the inhabitants of the commune. Whoever solicited a vote, either for himself or for his friends, or endeavoured to bribe the electors by money, or even by the favour of the king, was thereby deprived of the privilege of ever becoming a member of any ayuntamiento. To supply the expenses of the concejo, to provide for the erection of public buildings, the endowment of schools, the construction of roads, and other works of public utility or ornament, every concejo possessed certain property, which was inalienable. This fund was increased by the mulcts

imposed on certain criminals by the ayuntamiento. Any individual of that body, who was found guilty of malversation of this property, was obliged to restore double the sum he had misapplied. All the citizens enjoyed equal rights in these concejos: Christians, Moors, and Jews, all had the same privileges. No nobleman was allowed to settle in them, unless he first renounced all the privileges of his class, and became a commoner; nor was he allowed even to build a castle or a palace by which he might be distinguished from the rest of the citizens. If any one attempted to do so, the alcaldes were bound by fuero, and under the most severe penalties, to expel him from the concejo. Every individual who resorted to these colonies found in them the most perfect security against oppression; and in some of them, as was the case in Cuenca, he could not be prosecuted for any crime which he might have committed, or even for debts contracted, previous to his settling in the concejo: many accordingly withdrew from the tyrannical rule of the feudal lords, and flocked from every quarter to this seat of liberty.

Such were the immunities enjoyed by these colonies and their consequent state of prosperity, that many barons voluntarily renounced the privileges of their rank to settle in them. Many behetrias, or free cities, which were at liberty to place themselves under the protection of any lord they chose, preferred the patronage of the king, in order to enjoy the same privileges as the concejos. Similar fueros were also granted to such cities as rendered eminent services in the wars against the Moors. In all ordinary cases the ayuntamiento decided alone, but every subject which could interest the whole community was, and is even at this day, particularly in villages, decided in *concejo abierto*, or open council, in which all the citizens in the commune have a voice. When the king ordered anything *contra fuero*, the alcalde, placing the king's order upon his head as a sign of respect, pronounced his veto by the well-known formula of "obedezcase y no se cumpla," that is, let it be obeyed and not fulfilled. These ayuntamientos had also the privilege of sending their procuradores, or deputies, to the Cortes, or great assemblies of the nation; and these procuradores formed there the Brazo de las Universidades, or the House of Commons. This Brazo was always the most powerful auxiliary of the crown, and the most effective check against the pretensions of the barons in the times of feudalism. During the disturbed minorities of Ferdinando IV. and Alonso IX. of Castile, the municipal constitution of Spain suffered greatly. The kings and the feudal lords, always ready to take every advantage to forward their own interest, and to encroach upon the liberties of the nation, availed themselves of the pretext of disturbances in the elections of the ayuntamientos, and the king usurped the right of appointing their members in some concejos. The Cortes constantly remonstrated against this abuse, and several laws were enacted to prevent its continuance. Another innovation introduced by the kings was that of appointing corregidores, or *jueces asalariados*, salaried judges, to administer justice in the concejos, in the name of the king, by which measure he deprived the ayuntamiento of the judicial power. Under John II. of Castile, in the fifteenth century, on account of some dispute in the city of Toledo, it was established that the ayuntamiento of that city should consist of sixteen regidores—eight for the nobility, and eight for the commons, all appointed by the king, and holding their offices for life. "This abuse," says Mariana, "led to another—that of selling these offices, to the great detriment of the common weal, and thus institutions which are good in their origin and tendency, are often turned into evil." The nation continuing its remonstrances against this abuse, a law was enacted about 1540 (*Recopilacion*, book vii. title 3rd, law 25th), by which it was ordered that no town having a population under 500 vecinos (about 2000 souls) should have an ayuntamiento appointed by the government. Under the profligate government of Philip IV. the municipal offices were shamefully sold to the highest bidder in every large city; but in the small towns and villages, where these offices offered little or no

inducement, they continued to be elective. Some towns bought the privilege of electing their municipal officers, and were called on that account *concejos redimidos*, or redeemed councils. Under the presidency of Count Aranda it was established that two officers named personeros diputados del comun, or hombres-buenos, should be elected in every town to protect the interests of the people in the ayuntamiento. The Cortes of 1812 abolished all the abuses, and all the towns were restored to their primitive right of electing their municipal officers. Ferdinand VII., on his return from France, in 1814, rescinded everything which the Cortes had done, and restored the ayuntamientos perpetuos.

Notwithstanding the continual efforts of the government to destroy this salutary institution, so contrary to that centralizing system first established by Napoleon, and unfortunately blindly followed by more than one enlightened nation, it still exists, and has been at all times a check against despotism—feeble indeed, but yet sufficient to have still preserved in the Spanish nation a democratical spirit, which, on all occasions of great national interest, has manifested itself in its fulness. Ignorance of the municipal constitutions of Spain is one of the causes why politicians, both native and foreign, are so frequently deceived in their judgments and calculations relative to Spain, particularly in times of great political excitement. We have seen in our days, not to quote other more remote examples, that when the Spanish government in 1808 deserted the nation, delivering it into the hands of the French; when the nobility, the high clergy, and all the high civil and military functionaries acknowledged the disgraceful transactions of Bayonne, the alcalde of Mostóles (Schepeler, *Histoire de la Révolution d'Espagne*, vol. i. chap. 3, p. 55), an insignificant village in the neighbourhood of Madrid, raised the national standard against the Emperor of the French, and the whole nation flocking round it, exercised in its fulness that portion of the sovereign power which it had always preserved. This ignorance is perhaps one of the reasons why some individuals have so unjustly accused of dangerous innovations the principles of the constitution of Cadiz, in which however nothing else was contained than doctrines sanctioned by all the local fueros; and no rights were there proclaimed but those which the nation at all times had exercised, and was then actually exercising. (Mariana, *Examen de la Antigua Legislacion de España; Recopilacion de las Leyes de estos Reinos*, book vii.; Mariana, *Historia de España*, book xx. chap. 13.)

B.

BACHELOR, an unmarried man. The legislation of the Romans placed unmarried persons (caelibes) under certain disabilities, the chief of which were contained in the Lex Julia et Papia Poppæa. The original Lex was simply called Julia, and was passed B.C. 18. (Dion Cassius, liv. 16.) The Lex Papia et Poppæa, which was intended as an amendment and supplement to the Lex Julia, was passed A.D. 9; and both these leges seem to have been considered as one, and they are often referred to under the title of the Lex Julia et Papia Poppæa. One object of the Lex was to encourage marriage. An unmarried person (caelebs), who was in other respects qualified to take a legacy, was incapacitated by this Lex, unless he or she married within one hundred days. (Ulpian, *Frag.* xvii. tit. 1.) The law was the same if the whole property (hereditas) was left to a caelebs. (Gaius, ii. 111, 144, 286.) It was the opinion of the lawyers, that though a caelebs could not take directly under a testament, a caelebs could take by way of fidei commissum, or trust; but the Senatusconsultum Pegasianum, which was passed in the time of Vespasian, rendered a caelebs equally incapable of taking anything by way of fidei commissum. (Gaius, ii. 286.) A testamentary gift, which failed to take effect because the heres or legatee was a caelebs, was called Caducum (and the word was applied to other cases also), something which failed or dropped. In the first instance, such a gift came to those among the heredes who had children; and if the heredes had no

children, it came to those of the legatees who had children. If there were no such claimants, the Caducum came to the public treasury (aerarium). But by a constitution of the Emperor Antoninus Caracalla, the Caducum came to the Fiscus or Imperial treasury, instead of the public treasury; the rights of children and parents, however, were reserved. (Ulpian, *Frag.* xvii. tit.) An unmarried man who had attained the age of sixty, and an unmarried woman who had attained the age of fifty, were not subjected to the penalties of the Lex Julia et Papia Poppæa as to celibacy, but a Senatus-consultum Pernicianum (Persicianum), passed in the time of Tiberius, extended the penalties to unmarried persons of both sexes who were above sixty and fifty years old respectively, and it made them for ever subject to the incapacities. However, a Senatus-consultum Claudianum, passed in the time of Claudius, mitigated the severity of the Pernicianum, in case a man married above the age of sixty, provided he married a woman under fifty, for the Roman law considered a woman under fifty as still capable of procreation. (Ulpian, *Frag.* xvi. tit.; Suetonius, *Claudius*, c. 23.)

The Lex Julia et Papia Poppæa also imposed incapacities on *orbi*, that is, married persons who had no children from the age of twenty-five to sixty for a man, and twenty to fifty for a woman. Childless persons who came within the terms of the Lex lost one half of any hereditas or legacy; and what they could not take became Caducum. The Lex also gave direct advantages to persons who had children, which subject belongs to the head of MARRIAGE, as well as the history of its enactment. The original object of this Roman law was perhaps only to encourage marriage, but it was afterwards used as a means of raising revenue.

In the preceding exposition of the Lex Julia et Papia Poppæa, it has been assumed that the provisions above enumerated applied both to males and females. The word *caelebs*, indeed, seems to be applied only to males, and the Latin term for an unmarried woman is *Vidua*, which means any woman who has not a husband. But the expression of Ulpian (xvi. tit. 3), "Qui intra sexagesimum vel quae intra quinquagesimum annum neutri legi (the Julia, or Papia Poppæa) paruerit," &c., shows that the provisions applied both to males and females. The word caelebs would not be used in the enactments of the Lex, but the phrase would be "Qui Quaeve," &c. That the Lex applied to women also, appears from other evidence. (*Cod.* viii. tit. 57.) Under the Republic there were also penalties on celibacy, and legal inducements to marriage, which are mentioned in the speech which Dion Cassius (lvi. 57) puts into the mouth of Augustus. The censors also are said to have had the power of imposing a penalty called Aes Uxorium, wife-money, on men who were unmarried. (Festus, v. "Uxorium.") It was always a part of the Roman policy to encourage the procreation of children; the object of the English law imposing extraordinary payments on bachelors, and relieving to a certain extent married persons with children, was apparently to raise money, though a certain vague notion that marriage should be encouraged seems also to have occurred to the lawmaker. A constitution of Constantine (*Cod.* viii. tit. 58) relieved both unmarried men and women from the penalties imposed on caelibes and orbi, and placed them on the same footing as married persons. This change was made to favour the Christians, many of whom abstained from marriage from religious motives.

Not only bachelors, but widowers have been unequally taxed in this country; and there is more than one instance within the last sixty years, in which persons have been favoured by special exemptions, or have been charged less on account of the number of their children. In 1695 an act was passed (6 & 7 Will. III. c. 6) entitled "An Act for granting to his Majesty certain rates and duties upon marriages, births, and burials, and upon bachelors and widowers, for the term of five years, for carrying on the war against France with vigour." Bachelors above the age of twenty-five, and widowers without children, paid one shilling yearly, and further according to their rank.

Thus for a bachelor duke the tax was 12*l.*, and other ranks in proportion. An esquire was charged thirty-five shillings a-year, and a person of the rank of gentleman five shillings. Persons possessed of real estate of 50*l.* a-year, or personal property of 600*l.* value, paid five shillings. A supplementary act was passed two or three years afterwards (9 Will. III. c. 32), to prevent frauds in the collection of the taxes imposed by the former act, but the tax was allowed to expire in 1706. In 1785, when Mr. Pitt proposed a tax on female servants, he exempted persons who kept only one servant, and who had two or more lawful children or grandchildren under the age of fourteen living in the house with them. But to make up for the deficiency he proposed that the tax on servants should be higher for bachelors than for others; and he stated that the idea of this tax was borrowed from Mr. Fox. (25 Geo. III. c. 43.) This differential rate has been continued to the present time, and the number of servants charged at the higher rate in 1842 was 11,831, or rather more than one-tenth of the whole number charged. Roman Catholic clergymen are exempt from additional duty. When the income tax was imposed by Mr. Pitt, in 1798, deductions were allowed on account of children, and an abatement was made of 5*l.* per cent. to a person with children, when the income was above 60*l.* and under 400*l.*; and other rates of abatement were allowed according to the amount of income and the number of children; this indulgence extended to incomes of 5000*l.* a-year and upwards.

There does not appear to be a tax on bachelors in any country in Europe. In the city of Frankfort an income tax is paid by journeymen who work in the city, "if they are foreigners and not married."

BAILIFF signifies a keeper or superintendent, and is directly derived from the French word *bailli*, which appears to come from *ballivus*, and that from *bagalus*, a Latin word signifying generally a governor, tutor, or superintendent, and also designating an officer at Constantinople who had the education and care of the Greek emperor's sons. (Du cange, *Glossary*.) The word Baiolus, which seems to be the same as Bagalus, is used by the Roman classical writers to signify a porter, one who carries any burden on his back. (Facciolati, *Lex.*) The French word Bailli is thus explained by Richelet (*Dictionnaire*, &c.): "Bailli [Praetor Peregrinus]. He who in a province has the superintendence of justice, who is the ordinary judge of the nobles, who is their head for the *ban* and *arrière ban*, and who maintains the right and property of others against those who attack them. Messieurs of the Académie write the word with an f, Bailif." Richelet also mentions two classes of Baillis in the order of Malta. All the various officers who are called by this name, though differing as to the nature of their employments, seem to have some kind of superintendence intrusted to them by their superior. The sheriff is called the King's bailiff, and his county is his bailiwick. The keeper of Dover Castle is called the bailiff; and the chief magistrates of many ancient corporations in England had this name. Amongst the principal officers of corporate towns to which the inquiries of the Corporation Commissioners extended in 1835, there were 120 officers called bailiffs, and 45 inferior officers with the same designation, besides 29 water-bailiffs. But the chief functionaries to whom the name is applied in England are the bailiffs of sheriffs, the bailiffs of liberties or franchises, and the bailiffs of lords of manors.

1. *Bailiffs of Sheriffs* were anciently appointed in every hundred, to execute all process directed to the sheriff, to collect the King's fines and fee-farm rents, and to attend the justices of assize and jail delivery: they are called in the old books bailiffs errant. There is now a certain number of bailiffs appointed by the sheriff in his county or bailiwick, who are commonly called *bound* bailiffs, from their entering into a bond to the sheriff in a considerable penalty for their due and proper execution of all process which the sheriff intrusts to them to execute, whether against the person or the goods of individuals. These are called *common* bailiffs; but the sheriff may and often does, at the request of the suitor or

otherwise, intrust the execution of process to a person named merely for the occasion, who is called a *special* bailiff. The bailiff derives his authority from a warrant under the hand and seal of the sheriff: and he cannot lawfully arrest a party till he receives such warrant. It is a contempt of the court from which process issues, to hinder the bailiff in executing it; and when a party is taken by the bailiff, he is legally in the custody of the sheriff. An arrest may be made by the bailiff's follower; but the bailiff must in such case be at hand and acting in the arrest. The bailiff is forbidden by the Lord's Day Act, 29 Car. II. c. 7, to execute process on Sunday; and he is not authorized to break open an outer door to make an arrest under civil process, or to seize goods; but if the outer door is open, he may, in general, break open inner doors in execution of the process. If a bailiff misdemean himself grossly in the execution of process, as if he use unnecessary violence or force, or extort money from prisoners, or embezzle money levied, he will be punished by attachment from the court from whence the process issues.

2. *The bailiff of a franchise or liberty* is one who has the same authority granted to him by the lord of a liberty as the sheriff's bailiff anciently had by the sheriff. These liberties are exclusive jurisdictions, which still exist in some parts of the kingdom (as the honour of Pontefract, in Yorkshire, the liberty of Gower in Gloucestershire and adjoining counties), in which the King's writ could not formerly be executed by the sheriff, but only by the lord of the franchise or his bailiff. These districts proving inconvenient, the statute of Westminster the 2nd., c. 29, provided, that if the bailiff, when commanded to execute a writ within the franchise, gave no answer, a writ, with a clause of *non omittas*, should issue, authorizing and commanding the sheriff himself to enter the franchise and execute the writ; and it is now the practice in every case to insert this clause in the writ in the first instance, which enables the sheriff at once to execute it in the franchise. If, however, the party who sues out the writ neglects to insert this clause, the sheriff is not bound to enter the franchise; though if he do enter it, the execution will not be invalid: but if a sheriff's bailiff, in executing such a writ within a franchise, is resisted by the party to be taken, and is killed, it is not murder; for the bailiff is committing a trespass in consequence of the clause of *non omittas* not being inserted in the writ.

3. *Bailiffs of manors* are stewards or agents appointed by the lord (generally by an authority under seal) to superintend the manor; collect fines and quit-rents; inspect the buildings; order repairs, cut down trees; impound cattle trespassing; take an account of wastes, spoils, and misdemeanors in the woods and demesne lands; and do other acts for the lord's interest. Such a bailiff can bind his lord by acts which are for his benefit, but not by such as are to his prejudice, without the lord's special authority.

An act was passed in 1844 for regulating the bailiffs of inferior courts (7 & 8 Vict. c. 19), the preamble of which states that—"whereas courts are holden in and for sundry counties, hundreds and wapentakes, honours, manors, and other lordships, liberties and franchises, having, by custom or charter, jurisdiction for the recovery of debts and damages in personal actions, and in many places great extortion is practised under colour of the process of such courts:" and it is then enacted that bailiffs are to be appointed by the judge of the court; and remedies are adopted to prevent misconduct on the part of such bailiffs.

(Bacon's *Abridgment*, tit. "Bailiff," 7th ed.; Tomline's *Law Dictionary*, same title.)

BAILIWICK, from the French *bailli*, and the Saxon *wic*, the dwelling-place, or district of the bailiff, signifies either a county which is the bailiwick of the sheriff, as bailiff of the king, and within which his jurisdiction and his authority to execute process extend; or it signifies the particular liberty or franchise of some lord who has an exclusive authority within its limits to act as the sheriff does within the county. The corresponding French word is Bailliage. [BAILIFF; SHERIFF.]

BAILLIAGE, a French term equivalent with bailiwick, a district or portion of territory under the jurisdiction of an officer called a bailiff. This term was more especially appropriated to certain sub-governments of Switzerland, which at the time Coxe wrote his travels were of two sorts: the one consisting of certain districts into which all the aristocratical cantons were divided, and over which a particular officer called a bailiff was appointed by the government, to which he was accountable for his administration; the other composed of territories which did not belong to the cantons, but were subject to two or more of them, who by turns appointed a bailiff. The officer of this last sort of bailliage, when not restrained by the peculiar privileges of certain districts, had the care of the police, and under certain limitations the jurisdiction in civil and criminal causes. He also enjoyed a stated revenue, arising in different places from various duties and taxes. In case of exaction or maladministration an appeal lay to the cantons to which the particular bailliage belonged. (Coxe's *Trav. in Switz.* 4to. Lond. 1774, vol. i. p. 30.) These latter bailliages anciently formed part of the Milanese. Their names were—Mendrisio, Balerna, Locarno, Lugano, and Val-Maggia. Uri, Schweitz, and Underwalden possessed the three bailliages, Bellinzona, Riviera, and Val-Brenna, all which had also been dismembered from the Milanese. The chief of these bailliages were ceded to the cantons, in 1512, by Maximilian Sforza, who was raised to the ducal throne by the Swiss, after they had expelled the troops of Louis XII. and taken possession of the duchy. Francis I., successor of Louis, having recovered the Milanese, and secured his conquest by the victory of Marignano, purchased the friendship of the cantons by confirming their right to the ceded territory; a right which the subsequent dukes of Milan were too prudent to dispute. They were finally confirmed by the house of Austria. (Ibid. vol. ii. pp. 170, 418.) In 1727 the Italian bailiwicks were surrendered, with the cantons of Switzerland, to the French. (Planta's *Hist. of the Helvet. Confederacy*, 8vo. edit. vol. iii. p. 380.)

In 1802, when Bonaparte, as First Consul of France, remodelled the constitution of Switzerland, and increased the ancient number of its cantons to eighteen, that of Tessin was formed out of the Italian bailiwicks; an arrangement which was afterwards confirmed by the treaty of Paris, 30th of May, 1814, and recognised in the Helvetic Diet of 19th of March, 1815. (See the *Moniteur* for the 20th of February, 1803, and 22nd of May, 1815.)

BALANCE OF POWER. The notion upon which this phrase is founded appears to be the following:—When a number of separate and sovereign states have grown up beside each other, the entire system which they constitute may be conceived to be evenly balanced, so long as no single state is in a condition to interfere with the independence of any of the rest.

But as in such a system of states there are generally a few which may be considered as leading powers, it is by these being made to counterpoise each other that the balance is principally maintained. It is in this way only that the safety of the smaller states can be secured. Thus, in the ancient world, after the destruction of Carthage, there was no power strong enough to cope with Rome; and the consequence was, that the countries that yet remained sovereign powers successively fell under her dominion.

The subjugation of nearly the whole of India by Great Britain, and the establishment of the late widely-extended empire of France on the continent of Europe, may be quoted as other examples of the effect that results from the destruction of what is termed the balance of power.

On the contrary, so long as the power of one great state (however far surpassing in extent of territory, or other resources of strength and influence, many of those in its neighbourhood) can be kept in check, or, in other words, balanced by that of another, the independence of the smaller states is secured against both. Neither will be disposed to allow its rival to add to its power by the conquest or absorption of any of these minor and otherwise defenceless members of

the system. And in this way it happens that each state, whether great or small, has an interest and a motive to exert itself in the preservation of the balance.

This policy is so obvious, that it must have been acted upon in all ages, by every assemblage of states, so connected or situated as to influence one another. There may have been less or more of skill or wisdom in the manner of acting upon it, or the attempt to act upon it may have been more or less successful, in different cases; but to suppose that its importance had been overlooked by any states that ever existed in the circumstances described, would be to suppose such states to have been destitute of the instinct of self-preservation.

Mr. Hume (*Essays*, part ii. essay 7th) has shown conclusively, in opposition to the opinion sometimes expressed, that ancient politicians were well acquainted with the principle of the balance of power, although, as far as appears, they did not designate it by that name. "In all the politics of Greece," he observes, "the anxiety with regard to the balance of power is apparent, and is expressly pointed out to us even by the ancient historians. Thucydides (lib. i.) represents the league which was formed against Athens, and which produced the Peloponnesian war, as entirely owing to this principle; and after the decline of Athens, when the Thebans and Lacedæmonians disputed for sovereignty, we find that the Athenians (as well as many other republics) always threw themselves into the lighter scale, and endeavoured to preserve the balance. They supported Thebes against Sparta, till the great victory gained by Epaminondas at Leuctra: after which they immediately went over to the conquered—from generosity, as they pretended, but, in reality, from their jealousy of the conquerors." "Whoever," he adds, "will read Demosthenes' oration for the Megalopolitans, may see the utmost refinements on this principle that ever entered into the head of a Venetian or English speculatist." He afterwards quotes a passage from Polybius (i. c. 83), in which that writer states that Hiero, king of Syracuse, though the ally of Rome, yet sent assistance to the Carthaginians, during the war of the auxiliaries, "esteeming it requisite, both in order to retain his dominions in Sicily, and to preserve the Roman friendship, that Carthage should be safe; lest by its fall the remaining power should be able, without contest or opposition, to execute every purpose and undertaking. And here he acted with great wisdom and prudence; for that is never on any account to be overlooked; nor ought such a force ever to be thrown into one land as to incapacitate the neighbouring states from defending their rights against it." "Here," remarks Mr. Hume, "is the aim of modern politics pointed out in express terms."

It must be confessed, however, that the preservation of the balance of power was never so distinctly recognized and adopted as a principle of general policy in ancient as it has been in modern times. The systematic observance of the principle of the balance, subsequently to the subversion of the Roman empire, may be first traced in the conduct of the several Italian republics. It appears clearly to have formed part of what may be called the public law of these rival states from about the commencement of the fifteenth century. From the commencement of the next century it became an active principle in the general policy of Europe.

The leading rule by which it has ever since then been attempted to maintain the balance of power, may be stated to be the opposing of every new arrangement which threatens either materially to augment the strength of one of the greater powers, or to diminish that of another. Thus, first Austria, and afterwards France, have been the great objects of the jealousy and vigilance of the other states of Europe. While the power of the Germanic Empire was united in the person of Charles V. to the kingdom of Spain, that prince was naturally regarded as formidable both by France and England. If he could have effected a permanent alliance with either of these powers, or could have even induced one of them to stand aside and acquiesce, there can be little doubt that he would have taken that occasion to attempt to crush the other. The vast possessions of Philip II. appeared to call

for the same watchfulness and opposition, in regard to his projects, from all other states that valued their independence. In later times, the ambition of Louis XIV. of France, and the scheme concerted under his management to unite in one family the crowns of France and Spain, drew upon him, in like manner, the general hostility of Europe. There can be no doubt that, if the designs of this king had not been thus resisted, France would have become, a century earlier than it did, the mistress of the continent, and the independence of all other nations would, for a time at least, have been extinguished. The liberties of England, as founded upon the Revolution of 1688, could, in such circumstances, certainly not have been maintained.

It is nothing to the purpose to argue that the maintenance of the balance of power has often involved the nations of Europe in contests with each other, which, if they had disregarded that principle, would not have taken place; at least, not at the time. It may be better that all nations should be subject to one, than that each should preserve its independence; but that is not the question here: if nations will be sovereign and independent, they must fight for their sovereignty, as men must do for any other possession, when it is attacked.

But some persons appear to think that we in Great Britain have nothing to do with the maintenance of the so-called balance of power in Europe, because we live not on the continent, but in an island by ourselves. If the whole continent were reduced under subjection to a single despot, we certainly should not long remain independent. The protection which we now possess from the sea with which we are surrounded would, in the case supposed, certainly become insufficient.

The maintenance of the principle of the balance of power, however, although it has no doubt given occasion to some wars, has probably prevented more. Its general recognition has, to a certain extent, united all the states of Europe into one great confederacy, and habituated each of the leading powers to the expectation of a most formidable resistance in case of its making any attempt to encroach upon its neighbours. It is no sufficient objection to say that such attempts have been actually made. They would have been made much oftener had there been no such general understanding as we have spoken of. It must have operated as a great discouragement and check to the schemes of ambitious potentates to know that, from the first consolidation of the modern European system down to the partition of Poland in 1772—a period, we may say, of three centuries—not the smallest independent state had suffered extinction, or had been even very seriously curtailed of power or territory, notwithstanding all the wars for the purpose of conquest and aggrandizement that had been waged during that long interval.

BALANCE OF TRADE. In a tract published in 1677, called 'England's Great Happiness,' which is quoted by Mr. M'Culloch in the introductory discourse to his edition of Smith's 'Wealth of Nations,' is the following dialogue between "Complaint" and "Content:"—

"*Complaint.* What think you of the French trade, which draws away our money by wholesale? Mr. Fortrey gives an account that they get 1,600,000*l.* a year from us.

"*Content.* 'Tis a great sum; but, perhaps, were it put to a vote in a wise council, whether for that reason the trade should be left off, 'twould go in the negative. I must confess I had rather they'd use our goods than our money; but if not, I would not lose the getting of ten pounds because I can't get an hundred. . . . I'll suppose John-a-Nokes to be a butcher, Dick-a-Styles to be an exchange man, yourself a lawyer,—will you buy no meat or ribands, or your wife a fine Indian gown or fan, because they will not *truck* with you for indentures which they have need of? I suppose no; but if you get money enough of others, you care not though you give it away in specie for these things, I think 'tis the same case."

The year after this sensible and conclusive passage was written, an act was passed "to prohibit the importation of French goods, as highly detrimental to this kingdom." This act was to continue in force to the end of the then next session

of Parliament; and no session having been held during the remainder of the reign of Charles II., the prohibition continued until the accession of James II., who procured the repeal of the act in 1685; but the renewal of the prohibition was one of the first consequences of the revolution of 1688. From 1685 to 1688, says Anderson, this country was nearly "beggared" by an inundation of French commodities. In the reign of William III. the legislature voted the French trade a nuisance, and made the prohibition perpetual. This was to enforce what was called a favourable balance of trade. The notion, we thus see, was not a vague theory, but a mischievous rule of practice, which even now some people regard with admiration, and would make a part of our commercial code. They would have the nation to be the lawyer who wants to *truck* his indentures with the wine-merchant; but because the wine-merchant will not have the indentures, the lawyer ought, according to this, to go without the wine, although he might *sell* the indentures to the exchange-man, who would thus furnish him with the specie for buying the wine.

The balance of trade, as understood by those who adopt the theory, is the difference between the aggregate amount of a nation's exports and imports, or the balance of the particular account of the nation's trade with another nation. If the account shows that the imports (valued in money) exceed the exports (valued also in money), the balance is said to be against the nation; if the exports exceed the imports, the balance is said to be in the nation's favour. This mode of estimating the so-called balance is evidently founded on the assumption that the precious metals constitute the wealth of a country;—when the imports from any country, as valued in money, exceed the exports to the same, also valued in money, the exporting country must part with some of its precious metals in payment; and, according to the doctrine, must so far lose by the trade. A nation, such for instance as our own, has not the means of keeping very clear accounts of these matters, for we have an arbitrary standard of value, called *official*, which has been in use for about a century and a half, and which *official value* is an ingenious device for perplexing many otherwise simple questions, and for keeping up many absurd prejudices. Now, taking these official or unreal values in connexion with the device of the balance of trade, we find that during the year 1843 the United Kingdom gained some forty-eight millions sterling by a favourable balance; for its imports, or the goods which it received from foreigners, amounted to sixty-five millions, whilst its exports, or the goods it sent to foreigners, amounted to one hundred and thirteen millions, official valuation. In 1842 the same sort of excess amounted to fifty-two millions, and in 1841 to forty-nine millions. If the favourable balance of these three years were anything but a fiction, it is manifest that the nation would, in these three years only, have accumulated specie to the extent of the favourable balance, and this would amount to the sum of eighty-eight millions sterling. But, further, the same favourable balance has been going on for the last half-century, or longer; and the result would be, that all the specie in the world would at the present time be locked up in this island, and that the balance of forty-eight millions in 1843 would only be a small addition to the heap. Such a result is impossible, for bullion is as much a commodity for sale as corn, and is consequently as generally exchanged. [BULLION.] But if this result were possible, and a nation resolving to sell only for specie, as the Chinese affect to do with regard to tea, could have the power of selling only for specie, this power of turning all its goods to gold, like the same power bestowed upon the wise king Midas, would confer the privilege of being without food, and clothes, and every worldly comfort upon the unhappy inhabitants of such a nation. The truth is, that no commerce is of any value to a country except as it supplies the people of that country with foreign productions, which they either cannot produce at home, or which are produced cheaper and better abroad. The exchanging of the surplus produce of one

country for the surplus produce of another country is the object of all foreign commerce. The profit of the individual merchant is the moving force which impels the machinery of this commerce, but the end is that each country may consume what it would otherwise go without. In this point of view, every country is a gainer by its foreign commerce; and if this gain could be estimated by figures, every country which exchanges its products with another country would have a favourable balance of trade: for both individuals and nations exchange that which they do not want for other things that they do want; and when both parties continue to carry on such exchange, it is clear that both are gainers. Which gains most is a question that cannot be settled, and would be of no use if it could be settled.

But gold and silver are in one sense the most valuable products, because they have a universal value, and a nation which in its trade can get all it wants and gold too, will be richer than other nations. It will always have a great quantity of a material that is commercially more valuable than corn or manufactured articles. England has received a large part of its precious metal thus, in which it abounds above all countries; and this is invested in articles of use and ornament, and also gives employment to a vast mass of people, who receive for their wages a commodity of universal value. It also enables us to base our paper-money on the sound principle of convertibility for the precious metal.

BALLAST (Danish, *Baglast;* German, Dutch, and Swedish, *Ballast;* French, *Lest;* Italian, *Savorra;* Spanish, *Lastre;* Portuguese, *Lastro;* Russian, *Balast*), a term used to denote any heavy material placed in a ship's hold with the object of sinking her deeper in the water, and of thereby rendering her capable of carrying sail without danger of being overset. Ships are said to be in ballast when they sail without a cargo, having on board only the stores and other articles requisite for the use of the vessel and crew, as well as of any passengers who may be proceeding with her upon the voyage. In favour of vessels thus circumstanced it is usual to dispense with many formalities at the custom-houses of the ports of departure and entry, and to remit the payment of certain dues and port charges which are levied upon ships having cargoes on board.

A foreign vessel proceeding from a British port may take on board chalk as ballast; and by 3 & 4 Wm. IV. c. 52, shall not be considered as other than a ship in ballast in consequence of her having on board a small quantity of goods of British manufacture for the private use of the master and crew, and not by way of merchandise; but such goods must not exceed in value 20*l.* for the master, 10*l.* for the mate, and 5*l.* for each of the crew (§ 87). The masters of ships clearing out in ballast are required to answer any questions put to them by authority of the custom-house touching the departure and destination of such ships (§ 80).

Regulations have at various times been made in different ports and countries determining the modes in which ships may be supplied with ballast, and in what manner they may discharge the same; such regulations being necessary to prevent injury to harbours. It has likewise been sometimes attempted to convert the supply of materials for ballast into a monopoly. In vol. xx. of Rymer's *Fœdera*, p. 93, of the year 1636, we find a proclamation by King Charles I., ordering "that none shall buy any ballast out of the river Thames but a person appointed by him for that purpose," and this appointment was sold for the king's profit. Since that time, the soil of the river Thames from London Bridge to the sea has been vested in the corporation of the Trinity House, and a fine of 10*l.* may be recovered from any person for every ton of ballast which he may take out of the river, within those limits, without the authority of that corporation. Ships may take on board "land ballast" from any quarries or pits east of Woolwich, upon paying one penny per ton to the Trinity House. For river ballast, the corporation are authorized by Act of Parliament (3 Geo. IV. c. 111) to make certain charges. The receipts of the Trinity Corporation from this source were 33,591*l.* in 1840, and their expenses were 31,622*l.* The ballast of all

ships or vessels coming into the Thames must be unladen into a lighter, and if any ballast be thrown into the river, the master of the vessel whence it is thrown is liable to a fine of 20*l.*: some regulation similar to this is usually enforced in every port. (Hume's *Laws of the Customs; Report of Committee of House of Lords on Lights and Harbour Dues.*)

BALLOT. [VOTING.]

BAN, a word found in many of the modern languages of Europe in various senses. But as the idea of "publication" or "proclamation" runs through them all, it is probable that it is the ancient word *ban* still preserved in the Gælic and the modern Welsh in the simple sense of "proclaiming."

As a part of the common speech of the English nation, the word is now so rarely used that it is put into some glossaries of provincial or archaical words, as if it were obsolete, or confined to some particular districts or particular classes. Yet, both as a substantive and a verb, it is found in some of our best writers; among the poets, Spenser, Marlowe, and Shakspere; and among prose-writers, Knolles and Hooker. By these writers, however, it is not used in its original sense of "proclamation," but in a sense which it has acquired by its use in proclamations of a particular kind; and it is in this secondary sense only that it now occurs in common language, to denote cursing, denouncing woe and mischief against one who has offended. A single quotation from Shakspere's tale of 'Venus and Adonis' will show precisely how it is used by writers who have employed it, and by the people from whose lips it may still sometimes be heard:

> All swollen with chafing, down Adonis sits,
> *Banning* the boisterous and unruly beast.

The improvement of English manners having driven out the practice, the word has nearly disappeared. But in the middle ages the practice was countenanced by such high authority, that we cannot wonder at its having prevailed in the more ordinary ranks and affairs of life.

When churches and monasteries were founded, writings were usually drawn up, specifying with what lands the founder and other early benefactors endowed them; and those instruments often conclude with imprecatory sentences in which torments here and hereafter are invoked on any one who should attempt to divert the lands from the purposes for which they were bestowed. It seems that what we now read in these instruments was openly pronounced in the face of the church and the world by the donors, with certain accompanying ceremonies. Matthew Paris, a monk of St. Albans, who has left one of the best of the early chronicles of English affairs, relates that when King Henry III. had refounded the church of Westminster, he went into the chapel of St. Catherine, where a large assembly of prelates and nobles was collected to receive him. The prelates were dressed in full pontificals, and each held a candle in his hand. The king advanced to the altar, and laying his hand on the Holy Evangelists, pronounced a sentence of excommunication against all who should deprive the church of any thing he had given it, or of any of its rights. When the king had finished, the prelates cast down the candles which they held, and while they lay upon the pavement, smoking and stinking (we use the words of the author who relates the transaction), the Archbishop of Canterbury said aloud, "Thus, thus may the condemned souls of those who shall violate or unfavourably interpret these rights be extinguished, smoke, and stink:" when all present, but the king especially, shouted out "Amen, Amen."

This, in the English phrase, was the *banning* of the middle ages. Nor was it confined to ecclesiastical affairs. King Henry III., in the ninth year of his reign, renewed the grant of Magna Charta. In the course of the struggle which was going on in the former half of the thirteenth century between the king and the barons, other charters of liberties were granted. But for the preservation of that which the barons knew was only extorted, the strongest guarantee was required: and the king was induced to preside at a great assembly of nobles and prelates, when the archbishop pronounced a solemn sentence of excommunication against all persons of whatever degree who should violate the charters. This was done in

Westminster Hall, on the 3rd of May, 1253. The transaction was made matter of public record, and is preserved in the great collection of national documents called Rymer's *Fœdera*.

But besides these general *bannings*, particular persons who escaped from justice or who opposed themselves to the sentence of the church, were sometimes *banned*, or placed under a *ban*. In the history of English affairs one of the most remarkable instances of this kind is the case of Guido de Montfort. This Guido was the son of Simon de Montfort, earl of Leicester, and grandson of King John. In the troubles in England, in which his father lost his life, no one had been more active in the king's service than Henry of the Almaine, another grandson of King John, and the eldest son of Richard, that king's younger son, who had been elected King of the Almains. This young prince, being at Viterbo in Italy, and present at a religious service in one of the churches of that city, was suddenly assaulted by Guido de Montfort, and slain upon the spot. A general detestation of the crime was felt throughout Europe. Dante has placed the murderer in the *Inferno*:—

He in God's bosom smote
The heart still reverenced on the banks of Thames.

The murderer escaped. Among the rumours of the time, one was that he was wandering in Norway. This man the pope placed under a *ban*; that is, he issued a proclamation requiring that no person should protect, counsel, or assist him; that no person should hold any intercourse with him of any kind, except, perhaps, some little might be allowed for the good of his soul; that all who harboured him should fall under an interdict; and that if any person were bound to him by an oath of fidelity, he was absolved of the oath. This was promulgated throughout Europe. A papal bull in which the proclamation is set forth still exists among the public records in the chapter-house at Westminster. A copy of it is in Rymer's *Fœdera*. The pope uses the very expression *forbannimus*: "Guidonem etiam forbannimus."

This species of *banning* is what is meant when we read of persons or cities being placed under the *ban of the empire*, a phrase not unfrequently occurring in writers on the affairs of Germany. Persons or cities who opposed themselves to the general voice of the confederation were by some public act, like those which have been described, cut off from society, and deprived of rank, title, privileges, and property.

It is manifest that out of this use of the word has sprung that popular sense in which now only the word is ever heard among us, as well as the Italian *bandire*, French *bannir*, and the English *banish*. [BANISHMENT.]

In some parts of England, before the Reformation, an inferior species of *banning* was practised by the parish priests. "In the Marches of Wales," says Tyndal, in his work against the Romish Church, entitled *The Obedyence of a Christen Man*, 1534, "it is the manner, if any man have an ox or a cow stolen, he cometh to the curate and desireth him to curse the stealer; and he commands the parish to give him, every man, God's curse, and his; 'God's curse and mine have he,' sayeth every man in the parish." Stow relates that, in 1299, the dean of St. Paul's accursed at Paul's Cross all those who had searched in the church of St. Martin in the Fields for a hoard of gold. (*London*, p. 333.) Tyndal argues against the practice, as he does against the excommunicatory power in general. Yet something like it seems to be still retained in the Commination Service of the English Church.

In France the popular language has not been influenced by this application of the word *ban* to the same extent with the English. With them the idea of *publication* prevails over that of *denouncement*, and they call the public cry by which men are called to a sale of merchandise, especially when it is done by a beat of drum, a *ban*. In time of war a proclamation through the ranks of an army is the *ban*. In Artois and some parts of Picardy the public bell is called the *bancloque*, or the *cloche à ban*, as being rung to summon people to their assemblies. When those who held of the king were summoned to attend him in his wars, they were the *ban*, and tenants of the secondary rank the *arrière-ban*; and out of this

feudal use of the term arose the expressions *four à ban*, and *moulin à ban*, for a lord's bakehouse, or a lord's mill, at which the tenants of a manor (as is the case in some parts of England) were bound to bake their bread or to grind their corn. The *banlieue* of a city is a district around it, usually, but not always, a league on all sides, through which the proclamation of the principal judge of the place has authority. A person submitting to exile is said to *keep his ban*, and he who returns home without a recall *breaks his ban*.

The French use the word as the English do, when they speak of the *ban*, or, as we speak and write it, the *banns* of marriage. This is the public proclamation which the law requires of the intention of the parties named to enter into the marriage covenant. The law of the ancient French and of the English church is in this respect the same. The proclamation must be made on three successive Sundays in the church, during the time of the celebration of public worship, when it is presumed that the whole parish is present.

The intent of this provision is twofold: 1. To prevent clandestine marriages, and marriages between parties not free from the marriage contract, parties within the prohibited degrees of kindred, minors, or excommunicates; and, 2. to save the contracting parties from precipitancy, who by this provision are compelled to suffer some weeks to pass between the consent privately given and received between themselves and the marriage. Both these objects are of importance, and ought to be secured by law. The *ban*, or *banns*, may, however, be dispensed with. In that case a licence is obtained from some person who is authorized by the bishop of the diocese to grant it, by which licence the parties are allowed to marry in the church or chapel of the parish or parochial chapelry in which either of them resides, in which marriages are wont to be celebrated, without the publication of banns. The law, however, takes care to ensure the objects for which the publication of banns was devised, by requiring oaths to be taken by the party applying for the licence, and certificates of consent of parents or guardians in the case of minors. Special licences not only dispense with the publication of banns, but allow the parties to marry at any convenient time or place. These are granted only by the Archbishop of Canterbury, in virtue of a statute made in the twenty-fifth year of King Henry VIII., entitled an act concerning Peter-pence and dispensations.

It is not known when this practice began, but it is undoubtedly very ancient. Some have supposed that it is alluded to in a passage of Tertullian. Among the innovations introduced in France during the time of the first Revolution, one was to substitute for this oral publication a written announcement of the intention, affixed to the door of the town-hall, or in some public place, during a certain time. But when it is considered how liable these bills are to be torn down or defaced, and the questions which may arise in consequence, it would seem that it is not a mode which there is much reason to prefer to that which has so long been established in Christian nations.

BANISHMENT (from the French *Bannissement*), expulsion from any country or place by the judgment of some court or other competent authority.

The term has its root in the word *ban*, a word of frequent use in the middle ages, which has the various significations of a public edict or interdict, a proclamation, a jurisdiction and the district within it, and a judicial punishment. Hence a person excluded from any territory by public authority was said to be banished—*bannitus, in bannum missus*. (Ducange, *voc. Bannire, Bannum;* Pasquier, *Recherches*, pp. 127, 732.) [BAN.]

As a punishment for crimes, compulsory banishment is unknown to the ancient unwritten law of England, although voluntary exile, in order to escape other punishment, was sometimes permitted. [ABJURATION.] The crown has always exercised, in certain emergencies, the prerogative of restraining a subject from leaving the realm; but it is a known maxim of the common law, that no subject, however criminal, shall be sent out of it without his own consent or by authority of parliament. It is accordingly declared by the Great Charter, that "no

freeman shall be exiled, unless by the judgment of his peers or the law of the land."

There are, however, instances in our history of an irregular exercise of the power of banishing an obnoxious subject by the mere authority of the crown; and in the case of parliamentary impeachment for a misdemeanor, perpetual exile has been made part of the sentence of the House of Lords, with the assent of the king. (Sir Giles Mompesson's case, in the reign of James I., reported by Rushworth and Selden, and cited in Comyns, *Digest*, tit. "Parliament," 1. 44.) Aliens and Jews (formerly regarded as aliens) have, in many instances, been banished by royal proclamation.

Banishment is said to have been first introduced as a punishment in the ordinary courts by a statute in the thirty-ninth year of the reign of Elizabeth, by which it was enacted that "such rogues as were dangerous to the inferior people should be banished the realm;" but an instance occurs in an early statute of uncertain date (usually printed immediately after one of the eighteenth year of Edward II.), by which butchers who sell unsound meat are compelled to abjure the village or town in which the offence was committed. At a much later period the punishment now called transportation was sanctioned by the legislature, and has in other cases been made the condition on which the crown has consented to pardon a capital offence.

Some towns of England used to inflict the punishment of banishment from the territory within their jurisdiction, for life and for definite periods. The extracts from the Annals of Sandwich, one of the Cinque Ports, which are printed in Boys' 'History of Sandwich,' contain many instances of this punishment in the fifteenth and sixteenth centuries.

Banishment in some form has been prevalent in the criminal law of most nations, ancient as well as modern. Among the Greeks two kinds were in use:—1. Perpetual exile (φυγή), attended with confiscation of property, but this banishment was probably never inflicted by a judicial sentence; at least among the later Athenians a sentence of perpetual banishment appears only to have been pronounced when a criminal, who was accused of wilful murder, for instance, withdrew from the country before sentence was passed against him for the crime with which he was charged. The term *phuge* (φυγή) was peculiarly applied to the case of a man who fled his country on a charge of wilful murder, and the property of such a person was made public. Those who had committed involuntary homicide were also obliged to leave the territory of Attica, but the name *phuge* was not given to this withdrawal, and the property of the exile was not confiscated. Such a person might return to Attica when he had obtained the permission of some near kinsman of the deceased. (Demosthenes, *Against Aristocrates*, cc. 9, 16.) 2. Ostracism, as it was called at Athens, and in some other democratical states of Greece, or Petalism, the term in use at Syracuse, was a temporary expulsion, unaccompanied by loss of property, and inflicted upon persons whose influence, arising either from great wealth or eminent merit, made them the objects of popular suspicion or jealousy. Aristides was ostracized from Athens for ten years, not because he had done any illegal act, but because people were jealous of his influence and good fame.

The general name for Banishment among the Romans in the Imperial period was Exsilium; and it was a penalty inflicted under the Empire on conviction in a Judicium Publicum, if it was also a Judicium Capitale. A Judicium Publicum was a trial in which the accused came within the penalties of certain laws (leges), and it was Capitale when the penalties were either death or exsilium. This Exsilium was defined by the Jurists under the Empire to be "aquæ et ignis interdictio," a sentence which deprived a man of two of the chief necessaries of life. (Paulus, *Dig.* 48, tit. 1, s. 2.) The sentence was called Capital because it affected the Caput or Status of the condemned, and he lost all civic rights. There was also Exsilium which was not accompanied by civil disabilities, and accordingly was not Capitalis: this was called Relegatio. The person who was relegated was either

ordered to reside in some particular spot, or he was excluded from residing in particular places; the period of relegation might be definite or indefinite. If the relegatio was perpetual, the sentence might include the loss of part of his property; but the person who was relegated retained all the privileges of a Roman citizen. The poet Ovid was relegated to Tomi on the Danube: he was not exsul. Deportation, Deportatio in insulam, was a sentence by which a criminal was carried into some small island, sometimes in chains, and always for an indefinite period. A person who was relegated went to his place of exile. The person who was deported lost his citizenship and his property, but he continued to be a free man. It was a consequence of the loss of citizenship that the relation of the patria potestas was thereby dissolved, and accordingly a father who lost his citizenship by Deportation lost his power over his children; and the effect was the same if a son was under the penalty, for the son ceased to be a Roman citizen, and consequently ceased to be in his father's power. But marriage was not dissolved either by the Interdictio or Deportatio. (*Cod.* 5, tit. 16, s. 24; tit. 17, s. 1.) Interdictio and Deportatio are mentioned as two separate things in the Constitutions just referred to; but in the Institutes (i. tit. 12) Deportatio only is mentioned, and it corresponds to Interdictio in the passage in Gaius (i. 128). Some further remarks will presently be made on this part of the subject.

Under the early Republic Exsilium was not a punishment: it was, as the name imports, merely a change of soil. A Roman citizen could go to another state, and the citizen of such state could remove to Rome, by virtue of isopolitical rights existing between the two states. This right was called Jus Exsulandi, the Right of Exsilium as applied to the party who availed himself of it, and the Law of Exsilium when it is considered a part of the political system. The condition of the exsul in the state to which he had removed might be various; but it seems probable that he would acquire citizenship in his new state, though he might not enjoy it in all its fulness (optimo jure). By the act of removing to another state as an exsul, he divested himself of his original citizenship. A man who was awaiting his trial might withdraw before trial to another state into Exsilium—a practice which probably grew out of the Jus Exsulandi. Thus Exsilium, though a voluntary act, came to be considered as a punishment, for it was a mode of avoiding punishment; but still Banishment, as such, was not a part of the old Roman law. A practice was established under the later republic of effecting a sentence of banishment indirectly by means of the "interdictio aquæ et ignis," or with the addition of the word "tecti." (Cicero, *Pro Domo*, c. 30.) This sentence was either pronounced in a trial, or it was inflicted by a special lex. In the lex by which this penalty was inflicted on Cicero there was a clause which applied to any person who should give him shelter. This putting of a man under a ban, by excluding him from the main necessaries of life, had for its object to make him go beyond the limits within which he was subjected to the penalty; for the interdictio was limited to a certain distance from Rome. In Cicero's case the interdictio applied to all places within four hundred miles of Rome (*Ad Attic.* iii. 4). The interdictio did not prevent him from staying at Rome, but it was assumed that no man would stay in a place where he was excluded from the first necessaries of life. It has been a matter of dispute what was the legal effect of the Interdictio in the time of Cicero: in the period of the Antonines, as appears from Gaius, the sentence of Interdictio when pronounced for any crime, pursuant to a penal law (ob aliquid maleficium ex lege pœnali) was followed by loss of citizenship. The penal laws were various, such as the Julia Majestatis, Julia de Adulteriis, and others. In the Oration Pro Domo, the writer labours to prove that Cicero had not lost the civitas by the Interdictio, but the tenor of the argument rather implies that the loss of civitas was a legal effect of the interdictio, and that there were particular reasons why it was not so in the case of Cicero. The whole subject however is handled in such a one-sided manner that no safe conclusion can be derived from this oration. It appears from Cicero's own

letters that he considered it necessary for his safety to withdraw from Rome before the bill (rogatio) was passed by which he was put under the Interdict. He was restored by a lex passed at the Comitia Centuriata. (*Ad Attic.* iv. 1.) It appears from another letter (*Ad Attic.* iii. 23), that he had lost his civitas by the lex which inflicted the penalty of the Interdictio, but the loss of civitas may have been effected by a special clause in the Lex.

The rules as to Exile under the legislation of Justinian are contained in the *Digest*, 48, tit. 22. The use of the word Deporto as applied to criminals who suffered the punishment of Deportatio, occurs in Tacitus (*Annal.* iv. 13; xiv. 45). It may be inferred however, from an expression in Terence (*Phormio*, v. 8, 85), that the punishment of Deportatio existed under the Republic. When Ulpian observes (*Dig.* 48, tit. 13, s. 3) that "the penalty of Peculation (peculatus) comprised the Interdictio, in place of which Deportatio has now succeeded," he probably means not that the Deportatio was exactly equivalent to the Interdictio, and that the name merely was changed, but that the Interdictio was disused in the case of Peculatus and a somewhat severer punishment took its place. Under the earlier Emperors, the punishment of Deportatio and Interdictio both subsisted, as we see by the instances already referred to, and in the case of C. Silanus, Proconsul of Asia, who was convicted of Repetundæ and relegated to Cythera. (Tacitus, *Annal.* iii. 68, &c.) Some of the later Jurists seem in fact to use Exsilium as a general term for banishment, of which the two species are Relegatio and Deportatio. Relegatio again is divided into two species,—the Relegatio to a particular island, and the Relegatio which excluded a person from places which were specially named, but assigned no particular island as the abode of the Relegatus. The term Interdictio went out of use as the name of a special punishment, and Deportatio took its place, perhaps with some of the additional penalties attached to the notion of Deporto. In fact the verb Interdico is used by the later jurists to express both the forms of Relegatio, that under which a man was excluded from particular places (omnium locorum interdictio), and that by which he was excluded from all places except one (omnium locorum præter certum locum), which was in effect to confine him to the place that was named. (Marcianus, *Dig.* 48, tit. 22, s. 5, as corrected by Noodt, *Opera Omnia*, i. 58.) Sometimes the word Exsilium is used in the *Digest* (48, tit. 19, s. 38) to express the severer punishment of banishment, as opposed to the lighter punishment Relegatio. Practically then there were two kinds of banishment under the later empire, expressed by the names Relegatio and Deportatio, each of which had a distinct meaning, while the term Exsilium was used rather loosely.

The condemnation of criminals to work in the mines was a punishment in the nature of banishment, but still more severe. Thus, if a man seduced a maid who was of years too tender for cohabitation, he was sent to the mines, if he was a man of low condition; but only relegated, if he was of better condition. The same difference in punishment between people of low condition (humiliores) and those of better condition (honestiores) was observed in other cases; and it may be remarked that the like distinction in inflicting punishments is not unknown in this country in summary convictions.

Deportation is the third of the six "peines afflictives et infamantes" of the French Code Pénal. The punishment of deportation consists in the offender being transported out of the continental territory of France, there to remain for life; and if he returns, hard labour for life is added to his sentence. The sentence of deportation carries with it loss of all civil rights; though the government is empowered to mitigate this part of the penalty either wholly or in part. (Law of September, 1835, § 18, *Code Pénal.*) Banishment (*bannissement*) is classed as one of the two "peines infamantes," the other being civil degradation. The offender is transported by order of the government out of the territory of the kingdom for at least five and not more than ten years.

BANK, in barbarous Latin *bancus*,

literally signifies a bench or high seat; but as a legal term it denotes a seat of judgment, or tribunal for the administration of justice. In a rude state of society, justice is usually administered in the open air, and the judges are placed in an elevated situation both for convenience and dignity. Thus it appears that the ancient Britons were accustomed to construct mounds or benches of turf for the accommodation of their superior judges. (Spelman, *ad verbum.*) It is clear, however, that in very early times in this country there was a distinction between those superior judicial officers who, for the sake of eminence, sat upon a bench or tribunal, and the judges of inferior courts, such as hundred courts and courts baron, the latter being analogous to the *judices pedanei* of the Roman law—a kind of inferior judges, whose duties are not very clearly defined, but who are supposed to have derived their denomination *a pedibus*, because they decided on inferior matters, on the level ground, and not on a raised seat.

In consequence of this distinction, the king's judges, or those who were immediately appointed by the crown to administer justice in the superior courts of common law, were in process of time called justices of the bench, or, as they are always styled in records, *justiciarii de banco.* This term, in former times, denoted the judges of a peculiar court held at Westminster, which is mentioned in records of the reign of Richard I., and must therefore have made its appearance, under the name of *bancus* or bench, not long after the Conquest. This court no doubt derived its name from its stationary character, being permanently held at Westminster, whereas the *curia* or *aula regis* followed the person of the king. (Maddox, *History of the Exchequer*, p. 539.) This institution was the origin of the modern Court of Common Pleas, and the judges of that court retain the technical title of "Justices of the Bench at Westminster" to the present day; whereas the formal title of the King's Bench judges is "the justices assigned to hold pleas in the court of the king before the king himself." For many centuries, however, the latter court has been popularly called the Court of King's Bench, and the judges of both these courts have been described in acts of parliament and records in general terms as "the judges of either bench" (*judices utriusque banci*); but the barons of the Court of Exchequer have never been denominated judges of the bench, though, in popular language, a new baron, on his creation, is, like the other judges, said to be raised to the bench.

The phrase of sitting *in banco*, or in bank, merely denotes the sessions during the law terms, when the judges of each court sit together upon their several benches. In this sense it is used by Glanville, who wrote in the reign of Henry II., and who enumerates certain acts to be done by justices *in banco sedentibus. Days in bank* are days particularly appointed by the courts, or imposed upon them by various statutes, when process must be returned, or when parties served with writs are to make their appearance in full court. The day in bank is so called in opposition to the day at Nisi Prius, when a trial by a jury takes place according to the provisions of the statute of Nisi Prius. [ASSIZE.]

BANK—BANKER—BANKING. By the term "bank" is understood the establishment for carrying on the business to be described; the "banker" is the person by whom the business is conducted; and the expression "banking" is commonly used to denote the system upon which that business is managed, and the principles upon which it should be governed or regulated.

We propose to consider the subject of banks and banking under the following heads:—

I. A brief historical sketch of the origin and progress of banking.
II. An explanation of the objects and general principles of banking, including a description of the various kinds of banks.
III. The history and constitution of the Bank of England.
IV. The art of banking as carried on by private establishments and joint stock associations in London and other parts of England, and in Ireland.

V. A description of the Scotch system of banking.

VI. Some notices of the banking system followed in the United States of America.

I. *Historical sketch of the origin and progress of Banking.*—Until, in the progress of a community towards civilization, the extent of its commercial dealings had become very considerable, none would be led to give their attention to the occupation of facilitating the money operations of the rest of the mercantile community. At first this office would doubtless be undertaken for others by the more considerable traders, and a further period would elapse before it would become a separate business.

It is probable that the necessity for some such arrangement would be first experienced in consequence of the different weights and degrees of fineness of the coined moneys and bullion which would pass in the course of business between merchants of different nations. The principal occupation of the money-changers mentioned by St. Matthew was doubtless that of purchasing the coins of one country, and paying for them in those of their own or of any other people, according to the wants and convenience of their customers. It is likewise probable that they exercised other functions proper to the character of bankers, by taking in and lending out money, for which they either allowed or charged interest. (Matthew xxv. 27.)

The bankers of Athens appear to have fulfilled most of the functions belonging to the trade. (Demosthenes, *Against Aphobus, Orat.* 1.) They received money in deposit at one rate of interest, and lent it out at another; they advanced money upon the security of goods, and lent sums in one place to be repaid in another. They likewise dealt in foreign coins, and appear to have occasionally advanced money to the state for public purposes. Some of them, as we are told, acquired great wealth. In the treatise written by Xenophon on the revenues of Attica, we find a remarkable project for the formation of a bank, the subscription to which should be open to all the Athenians. The object of this project was to raise a great revenue, by taking advantage of the high rate of interest then currently paid by commercial adventurers, and which sometimes reached the exorbitant rate of twenty-five per cent. The grandeur of this scheme of Xenophon, which was intended to combine the whole free population of Athens into one great banking company, could hardly have been in agreement with the condition of a society in which the element of mutual confidence was but scantily infused. To afford a better chance of success to his proposal, Xenophon endeavoured to engage the public spirit of his countrymen in its favour, by suggesting that a part of the great gains which it could not fail to produce might be employed " to improve the port of Athens, to form wharfs and docks, to erect halls, exchanges, warehouses, market-places, and inns, for all which tolls and rents should be paid, and to build ships to be let to merchants." (Mitford, *History of Greece*, vol. iv. p. 22.)

The successive conquests of the Romans having caused a great mass of wealth to be accumulated in the city of Rome, a necessity arose for the establishment of bankers. These traders were called *argentarii*, and their establishments received the name of *tabernæ argentariæ*. *Mensarii* and *Numularii* are said to have been public functionaries, who had something to do with money; but their functions do not seem to be very clearly ascertained. Bankers (argentarii) conducted money business in Rome in a manner very similar to that now in use in Europe. They were the depositaries of the revenues of the wealthy, who through them made their payments by written orders. They also took in money on interest from some, and lent it at higher rates to others; but this banking trade does not appear to have been held in much repute in Rome, where a great prejudice existed against the practice of making a profit from the loan of money. They also sometimes conducted public sales (auctiones), where they had to receive the purchase-money and do whatever was necessary towards completing the bargain. (Gaius, iv. 126.)

During the middle ages, in which com-

merce and the arts can hardly be said to have existed, there could be no field open for the banking business; but on the revival of commerce in the twelfth century, and when the cities of Italy engrossed nearly all the trade of Europe, the necessity again arose for the employment of bankers. At first they carried on their business in the public market-places or exchanges, where their dealings were conducted on benches, whence the origin of the word bank, from *banco*, the Italian word for a bench. The successful manufacturing efforts of the Florentines brought them into commercial dealings with different countries in Europe, and thence arose the establishment of banks. In a short time Florence became the centre of the money transactions of every commercial country in Europe, and her merchants and bankers accumulated great wealth.

The earliest public bank established in modern Europe was that of Venice, which was founded in 1157. This bank was in fact an incorporation of public creditors, to whom privileges were given by the state as some compensation for the withholding of their funds. The public debt was made transferable in the books of the bank, in the same manner as the national debt of England is transferable at the present time; it was made obligatory upon the merchants to make their contracts and draw their bills in bank-money, and not in the current money of the city. This establishment was always essentially a bank of deposit and not of issue, and existed until the subversion of the republic in 1797. Its money at all times bore a premium, or *agio*, over the current money of the city. [AGIO.]

About the year 1350, the cloth-merchants of Barcelona, then a wealthy body, added the business of banking to their other commercial pursuits; being authorised so to do by an ordinance of the king of Aragon, which contained the important stipulation, that they should be restricted from acting as bankers until they should have given sufficient security for the liquidation of their engagements. Fifty years afterwards, a bank was opened by the functionaries of the city, who declared their public funds answerable for the safety of money lodged in their bank, which was a bank of deposit and circulation.

The Bank of Genoa was planned and partially organised in 1345; but was not fully established and brought into action until 1407, when the numerous loans which the republic had contracted with its citizens were consolidated, and formed the nominal capital stock of the bank. This bank received the name of the Chamber of Saint George, and its management was intrusted to eight directors chosen by the proprietors of the stock. As a security for its capital in the hands of the republic, the bank received in pledge the island of Corsica, and several other possessions and dependencies of Genoa.

The Bank of Amsterdam was established in 1609, simply as a bank of deposit, to remedy the inconvenience arising from the great quantity of clipt and worn foreign coin which the extensive trade of the city brought there from all parts of Europe. This bank, which was established under the guarantee of the city, received foreign coin, and the worn coin of the country, at its real intrinsic value, deducting only a small per centage which was necessary for defraying the expense of coinage and the charges of management. The credit given in the bank-books for coin thus received, was called bank-money, to distinguish it from the current money of the place. The regulations of the country directed that all bills drawn upon or negotiated at Amsterdam, of the value of 600 guilders (about 55*l.*) and upwards, must be paid in bank-money. Every merchant was consequently obliged to keep an account with the bank, in order to make his ordinary payments. The Bank of Amsterdam professed to lend out no part of its deposits, and to possess coin or bullion to the full value of the credits given in its books. Dr. Adam Smith has given an account of this bank (*Wealth of Nations*, book iv. c. 3). When the French invaded Holland, it was discovered that the directors had privately lent nearly a million sterling to the states of Holland and Friesland, instead of keeping bullion in their cellars in accordance with the regulations of the

Bank. In 1814 a new bank was established, called the Bank of the Netherlands, on the plan of the Bank of England.

The Bank of Hamburg was established in 1619, and is a well-managed institution, conducted upon nearly the same plan as the Bank of England. The Bank of England, which we have separately noticed, was opened in 1694. The Bank of Vienna, established in 1703 as a bank of deposit and circulation, subsequently (1793) became a bank of issue; and its notes were the sole circulating medium in Austria; but having fallen to a considerable discount in consequence of their excessive quantity, the Austrian National Bank was established in 1816, with the object of diminishing the paper currency, and of performing the ordinary banking functions. The banks of Berlin and Breslau were erected in 1765, under the sanction of the state. These are banks of deposit and issue, and are likewise discounting-offices for bills of exchange.

During the reign of the Empress Catherine, three different banks were established at St. Petersburg; these were, the Loan Bank, the Assignation Bank, and the Loan Bank for the nobility and towns. The Loan Bank, or Lombard, or Russian Mont de Piété, was established in 1772, and makes advances upon deposits of bullion and jewels, and allows interest upon all sums deposited for at least a year. The operations of this bank as a Mont de Piété are still carried on for the profit of the Foundling Hospital in St. Petersburg. The Assignation Bank, opened in St. Petersburg in 1768, and Moscow in 1770, issues the government paper-money, and is in all respects an imperial establishment: it is now called the Imperial National Note Bank, having been changed into a Reichs (imperial) assignation bank at St. Petersburg in 1786. The Loan Bank, established in 1786, for the nobility and towns, advances money on real security. It is likewise a discount-bank, and acts as an insurance company. The Aid Bank, established in 1797, advances money to relieve estates from mortgages, and to provide for their improvement. The punctual payment of interest upon its advances is enforced by taking their estates from the possession of defaulters until the entire debt is discharged. The Imperial National Commercial Bank of Russia, which was established in 1818, receives deposits of coin and bullion, and has a department for transferring credits from one account to another, in the manner of the banks of Amsterdam and Hamburg. It is also a bank of discount, and makes advances upon merchandise of home production. Its capital, about a million and a half sterling, is declared to be sacred on the part of the Russian government, and free from all taxation, sequestration, or attachment, as well as from calls for assistance on the part of the state. This bank has branches at Moscow, Archangel, and other important commercial towns in the empire.

The Bank of France, established in 1803, has a capital of 3,596,000*l.* sterling. This association alone enjoys the privilege of issuing notes in France, which are for 1000 to 500 francs each. The bank is a bank of deposit and circulation, and has several branches. It is obliged to open an account with any person who may require it; and is not allowed to charge any commission for the transaction of ordinary banking business. Its profits result from the use of money deposited by its customers, from the issue of its own notes, and from discounts upon mercantile bills; besides which, a charge is made every six months of one-eighth per cent. for the safe custody of plate, jewels, and other valuables upon which it has made advances. The affairs of this bank are managed by a governor and deputy-governor, who are nominated by the king, and by seventeen regents and three censors elected from among the shareholders. A full statement (*compte rendu*) is published every quarter (pursuant to the law of 30th of June, 1840), which furnishes a complete exposition of the affairs of the bank, which is one of the most flourishing and best managed banks in Europe. The official return of the operations and state of the bank for the quarter ending 25th September, 1844, contained the following items:—Sundry Cash Receipts 44,309,380*l.*; Cash paid 44,173,028*l.*; Commercial Bills discounted 11,140,896*l.*; Notes outstanding

9,636,724*l.*; Cash in hand 10,449,876*l.*; Public Securities 2,009,200*l.* This return shows that the capital of the bank in bullion exceeded the amount of notes in circulation.

Banks have been established at Calcutta, Bombay, and Madras; and in the interior of India the natives are extensively engaged in banking, but chiefly in issuing and discounting bills of exchange. Within the last few years several banks have been established in London which confine their business chiefly to particular colonies, where they have branches.

II. *Objects and General Principles of Banking.*—Banking establishments may be divided into three classes, banks of deposit, banks of issue, and banks which exercise both these functions.

Banks of deposit, strictly speaking, are those which, like the old bank of Amsterdam, simply receive the money or valuables of others into custody, and keep them hoarded in their coffers till called for by the depositors. However convenient such an establishment may be to the persons by whom it is used, it must be evident that it can contribute nothing to the general wealth of a community, and that the only means of profit which it provides for those who conduct it, must arise from payments made by its customers in the shape of commissions, or fines which partake of the nature of commissions. If, instead of burying the clipt and worn coins of which its hoards were composed, the Bank of Amsterdam had converted them into money of the proper standard, and had lent the same at interest upon proper securities, no commissions need have been required from its customers, who would in so far have been benefited: and a considerable capital being set free for the prosecution of commercial enterprises, the country might have thence derived continued additions to its wealth.

Banks of deposit, in this confined sense of the word, are now very little used, and the term is generally understood to mean an establishment which *lends* as well as *receives* the property of others, and derives its profits from charging a higher rate of interest than it allows. Some banks of this description, such as the private banks in London, do not allow any interest upon sums placed in their custody.

In like manner there are few, if any, establishments which are purely banks of issue. A banker sends forth his promissory notes that he may employ to his own profit, during the time that the notes remain in circulation, the money or property for which he may have exchanged them, and by this course he gives to his establishment the mixed character of a bank of issue and of circulation. The most usual means by which a banker gets his notes into circulation is by lending them on personal or other security to customers engaged in business, who have a running account at the bank. In general, those bankers who issue their own notes likewise receive deposits: this at least is the practice in England.

Bankers and banking associations usually possess considerable wealth, and are thought deserving of confidence on the part of the public; and there can be no doubt that, so long as they conduct their business with integrity and prudence, they are of material service in giving life and activity to commercial dealings. They are, in fact, the means of keeping that portion of the floating capital of a country fully and constantly employed, which but for their agency would frequently lie dormant and unproductive for uncertain periods in the hands of individuals. Thus, while banking does not directly create capital, the issue of bank notes enables people to buy who could not buy for want of a medium of exchange. Again, a large farmer has grain and stock, and he wants to drain; but money is short. He goes to a bank and gets bank-notes on the security of his property. That is a useful operation. Another thing is, people may deposit small sums of money at a bank, which the banker lends. Thus a bank is a mean of facilitating the loan of money from the possessor of money to the farmer or manufacturer who has goods, but wants ready money. The lending of money is the operation of banking, and a bank is a centre which facilitates this lending: it enables people to lend through a banker and his connexion, who could not lend without that. But the real legal loan is the banker's. The man who puts

his money in the bank looks to the banker only. And every man who holds a banker's note is his creditor to that amount. How to secure the safety of this operation, so that he who has a note shall always get what he gave for it, is the question that concerns the public.

Public banks, when established under proper regulations, are calculated to benefit the community in the greatest degree, and if at any time their course of management has been such as to counteract the advantages they bring, and to derange the money dealings of the country in which they are established, the evil has arisen from the want of an adequate acquaintance with the principles upon which their proceedings should be founded. In this respect, public banks may indeed be rendered in the highest degree public nuisances, but such an effect is far from being the necessary attendant of the banking system; on the contrary, it may be confidently affirmed, that no institutions are so well calculated to preserve order and steadiness throughout commercial transactions. In this country, and in our own day, we have seen and felt the disastrous effects of a want of knowledge in this branch of political science on the part of those who have directed our national bank, one of the most powerful engines of modern times, and it has only been through the discussions and investigations that have arisen out of those disasters that we have at length brought out, so as to be felt and acknowledged and acted upon, sound and safe principles for regulating the trade of a banker.

The true principle upon which bank issues should be governed is now understood to be—that the circulation should at all times be kept full, but without any redundancy; and the simple means whereby this state of things may be determined and regulated are (except on very extraordinary emergencies) offered by the state of the foreign exchanges.

We cannot better close this part of the subject than by the following quotation from Dr. Smith (*Wealth of Nations*, vol. ii. p. 69), in his chapter on Money:—"It is not by augmenting the capital of the country, but by rendering a greater part of that capital active and productive than would otherwise be so, that the most judicious operations of banking can increase the industry of the country. That part of his capital which a dealer is obliged to keep by him unemployed and in ready money, for answering occasional demands, is so much dead stock—which, so long as it remains in this situation, produces nothing, either to him or to his country. The judicious operations of banking enable him to convert this dead stock into active and productive stock—into materials to work upon, into tools to work with, and into provisions and subsistence to work for: into stock which produces something both to himself and to his country. The gold and silver money which circulates in any country, and by means of which the produce of its land and labour is annually circulated and distributed to the proper customers, is, in the same manner as the ready money of the dealer, all dead stock. It is a very valuable part of the capital of the country which produces nothing to the country. The judicious operations of banking, by substituting paper in the room of a great portion of this gold and silver, enable the country to convert a great part of this dead stock into active and productive stock—into stock which produces something to the country. The gold and silver money which circulates in any country may very properly be compared to a highway, which, while it circulates and carries to market all the grass and corn of the country, itself produces not a single pile of either. The judicious operations of banking, by providing (if I may be allowed so violent a metaphor) a sort of waggon-way through the air, enable the country to convert as it were a great part of its highways into pastures and corn-fields, and thereby to increase very considerably the annual produce of its land and labour."

III. *History and Constitution of the Bank of England.*—This establishment, unquestionably the largest of its kind in Europe, was projected by a Scotch gentleman, Mr. William Patterson, in 1694. The scheme having received the sanction and support of the Government, to whom the whole of the capital was to be lent, the subscription was filled in ten days

from its being first opened; and on the 27th of July, 1694, the Bank received its charter of incorporation. This charter provides, "that the management and government of the corporation be committed to a governor, deputy-governor, and twenty-four directors, who shall be elected between the 25th of March and the 25th of April every year, from among the members of the company;—that those officers must be natural-born subjects of England, or have been naturalized;—that they shall possess, in their own names and for their own use, severally, the governor (at least) 4000*l.*, the deputy-governor 3000*l.*, and each director 2000*l.* of the capital stock of the said corporation;—that thirteen or more of the said governors and directors (of whom the governor or deputy-governor shall be always one) shall constitute a Court of Directors, for the management of the affairs of the company;—that no dividend shall at any time be made by the said governor and company, save only out of the interest, profit, or produce arising out of the said capital stock or fund, or by such dealing as is allowed by Act of Parliament." Each elector must be possessed of at least 500*l.* capital stock of the company. Four general courts to be held in every year, in the months of April, July, September, and December; and special general courts to be summoned at all times upon the requisition of nine qualified proprietors. The majority of electors present at general courts to have the power of making bye-laws for the government of the corporation; but such bye-laws must not be repugnant to the laws of the kingdom.

The original capital of the Bank, which amounted to 1,200,000*l.*, was, as already mentioned, lent to Government, who paid interest for the same at the rate of 8 per cent., with a further allowance of 4000*l.* a year for management.

The first charter was granted to continue for eleven years certain, or till a year's notice after the 1st of August, 1705.

In 1697 a new subscription was raised and lent to Government, to the amount of 1,001,171*l.* 10*s.*, which sum was repaid in 1707, and the capital again reduced to its original amount. In the following year the charter was renewed until 1732; and in 1713 a still further extension was granted for ten years, or until 1742. On the first of these occasions the capital was raised by new subscriptions to 5,559,995*l.* In 1722 further subscriptions were received, amounting to 3,400,000*l.*; and in 1742, when the charter was again renewed until 1764, a call made upon the stockholders raised the entire capital to 9,800,000*l.* A further call of 10 per cent. upon this amount was made in 1746. The charter was again renewed until 1786; but previous to the expiration of this term, was continued until 1812, a call of 8 per cent. having been made in 1782. In 1800 the charter was further extended until twelve months' notice after the 1st of August, 1833; and in 1816 the directors were empowered to appropriate a part of their undivided profits among the proprietors, by adding 25 per cent. to the amount of their stock. These successive additions raised the capital of the Bank to 14,553,000*l.*, the whole of which amount was, as it was raised, lent to Government. At the renewal of the company's charter, which was granted in 1833 (Act 3 & 4 Wm. IV. c. 98), a provision was made for the repayment, on the part of the public, of one-fourth part of the debt due to the Bank. At each of the times before mentioned for the renewal of the charter, some advantage was given by the Bank to the public, in the shape of an advance of money at a low rate of interest, or without any interest. At present, the rate paid by Government for the Bank capital is 3 per cent. per annum.

From its first institution, the Bank of England has discounted mercantile bills. The rate of discount charged fluctuated at first, but was usually between 4½ and 6 per cent. In 1695 a distinction was made in this respect, in favour of persons who used the Bank for purposes of deposit: for such persons inland bills were discounted at 4½, and foreign bills at 3 per cent.; while to all other persons the rate was 6 per cent. upon both descriptions of bills. After that time the rates were equalized to all classes, and fluctuated between 4 and 5 per cent. until 1773, when 5 per cent. was fixed as the rate of

discount upon all descriptions of bills; and at this per-centage the Bank continued to discount bills until June, 1822, when it was lowered to 4 per cent. The rate was again advanced to 5 per cent. during the panic, in December, 1825; but was lowered in July, 1827, to 4 per cent.

Shortly after its first establishment, the Bank was involved in some difficulties, and was obliged, in 1696, even to suspend the payment of its notes, which were then at a considerable discount. Having received assistance from Government, this difficulty was soon surmounted; and the establishment was not again placed in the same dilemma until 1797, when the celebrated Bank Restriction Act was passed, which will require a more particular notice.

In 1708 an Act was passed, greatly in favour of the Bank of England, declaring that "during the continuance of that corporation it should not be lawful for any other body politic, erected or to be erected, other than the said Governor and Company of the Bank of England, or for any other persons whatever united, or to be united, in covenants of partnership exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes payable on demand, or in any less time than six months from the borrowing thereof." This Act continued in force until 1826, when it was partially repealed, so as to admit of the formation of banking establishments for the issue of notes with more than six partners, at any distance exceeding sixty-five miles from London; but these establishments were restrained from having any branches in London; and it was expressly declared that the partners, jointly and severally, should be held liable for all the debts of the bank with which they might be connected.

Until a very recent period, it was not doubted that the Act of 1708, as above described, forbade the formation of banks of all descriptions having more than six partners, and this impression was universally acted upon. Even the discussions which preceded the partial relaxation of its provisions, in 1826, failed to produce any different views regarding it. During the negotiations of 1833 for the renewal of the Bank Charter, strong doubts were conceived upon the point as to whether the restriction was not confined to the forbidding only of banks of issue; and the law-officers of the crown having been called upon for their opinion on the subject, gave it as their decided opinion, that banks, provided they did not issue their own notes payable to bearer, might have been at any time established in any part of the kingdom. To remove all doubts upon the subject, a clause was introduced in the Act of 1833, expressly authorizing the establishment of banks which do not issue notes, with any number of partners, in any place within or without the limits to which the exclusive privilege of the Bank of England, in regard to issuing notes, now applies.

The Bank is expressly prohibited from engaging in any commercial undertaking, other than transactions purely and legitimately connected with banking operations, such as the buying and selling of coin or bullion, and bills of exchange. But a power being given to the corporation to advance money upon the security of goods and merchandise, it was of course necessary to empower the directors to sell the same for their reimbursement.

In the year 1759 the Bank began to issue notes for 10*l.*, having previously not put any into circulation below 20*l.* Notes of 5*l.* value were first issued in 1793; and in March, 1797, 1*l.* and 2*l.* notes were brought into use. The issue of the latter, except in one partial instance, ceased in fact in 1821, and by law on the 5th of April, 1829, since which time 5*l.* is the smallest sum for which any bank in England may send forth its notes payable to bearer.

The necessity for the issue of notes for so small an amount as 1*l.* arose out of the act of 1797, which restricted the Bank from making payments in gold, a measure which was forced upon it by the financial operations of the Government, then very largely indebted to the corporation. Under these circumstances it became a matter of necessity as well as

of justice towards the Bank to interpose, and to shield it from a catastrophe towards which it had been hurried through yielding to the solicitations for assistance made by the Government. On Saturday, the 25th of February, only 1,270,000*l.* in coin and bullion remained in the coffers of the Bank. On the following day an order in council was issued, prohibiting the directors from paying their notes in specie until the sense of parliament could be taken on the subject. The promulgation to the public of this order being accompanied by assurances of the affluent circumstances of the corporation, as well as by a declaration on the part of the leading bankers and merchants of London, pledging themselves to receive bank-notes in payment of any sums due to them, failed to make any injurious impression. A committee of the House of Commons was immediately afterwards appointed to inquire into the affairs of the Bank, which committee reported that a surplus of effects to the amount of 3,825,890*l.* was possessed by the corporation over and above its capital of 11,684,800*l.* then in the hands of Government.

The circumstances by which the suspension of cash payments was rendered necessary were altogether of a political nature. In the contest then carried on, which, with only a few months' interval in 1801 and 1802, continued until 1815, and which involved the country in expenses of unparalleled magnitude, it was considered indispensable for the government to be provided with a powerful engine for carrying on its financial operations, and it was thought also to have been necessary, under those circumstances, to remove from the engine thus employed the ordinary responsibilities which should attach to a banking establishment. The Minister, on the second renewal of the Restriction Act, prevailed upon parliament to continue its duration until one month after the conclusion of war by a definitive treaty of peace. The period thus contemplated having arrived at the close of 1801, it was found necessary, in consequence of the unsettled state of affairs, to prolong the act for a further period; and the war having soon after recommenced, the restriction was again continued until six months after the ratification of a definitive treaty of peace.

The financial operations of the Government having been continued upon a most enormous scale up to the very moment of the treaty of peace in 1814, the Bank, which had seconded those efforts, and had made no preparation for so total a change of system, procured the renewal of the Suspension Act until the 5th of July, 1816. If this question had at that time been settled with a view to the public good, we may venture to assert that the Restriction Act would not have been renewed. Commerce was again allowed to flow into its natural channels,—we found anxious customers, at high prices, for goods which had before been ruinously depressed, and it became as impossible to keep the gold out, as it had, under the contrary circumstances, been to retain it within the kingdom.

Had the Bank of England at this time contracted its issues in only a very trifling degree, its notes would have been restored to their full value, measured by the price of gold, a fact which can hardly be doubted if we consider how large a proportion of their depreciation was recovered under a directly opposite course of proceeding. At the end of 1813, the amount of Bank of England notes in circulation was 23,844,050*l.*, the price of gold was 5*l.* 10*s.* per ounce, and the depreciation of Bank-paper consequently amounted to 29*l.* 4*s.* 1*d.* per cent. At the end of 1814, the Bank issues were increased to 28,232,730*l.*, and the price of gold had fallen to 4*l.* 6*s.* 6*d.* per ounce, so that the notes were depreciated only to the extent of 9*l.* 19*s.* 5*d.* per cent. The rise in value which Bank of England notes actually experienced, amounting to 19*l.* 4*s.* 8*d.* per cent., or nearly two-thirds of their depreciation, was occasioned, in the face of an increased issue of more than 18 per cent., by the great quantity of gold poured into the country at the reopening of our commerce, and no doubt also in some degree by the diminished circulation of the notes of country bankers.

This state of things could not last long. Gold can never continue to circulate in

the presence of an inconvertible paper currency, and an opportunity, the best that could possibly have offered for extricating ourselves from a false position, and for restoring our currency to a sound and healthy state, was suffered to pass unimproved. The reason for this neglect is sufficiently obvious. The Bank directors, however blameless for the state of things which first caused the restriction, soon found that measure productive of enormous profits to their establishment, and were anxious to prolong its operation by every means within their power; and the ministers, who had still large financial operations to make, found it most to their convenience to effect them in a redundant paper currency.

Except at the very moment of its enactment, the Bank Restriction Act was for some time so little needed for the security of that corporation, that its notes, during the first three years of the system, were fully on a par with gold, and sometimes even bore a small premium. In less than seven months after the Suspension Act was first put in force, the directors of the bank passed a resolution, in which they declared that the corporation was in a situation to resume with safety making payments in specie, if the political circumstances of the country did not render such a course inexpedient. After a time, the suspension was found to be so convenient and profitable to the Bank, that the wish to recur to cash payments was no doubt abandoned by the directors. In 1801 and the following year, Bank notes, owing to their excessive quantity in circulation, fell to a discount of 7 to 8 per cent., but partially recovered in 1803, and remained until 1810 within 2 or 3 per cent. of par. In the year last mentioned the depreciation occurred which led to the appointment of the celebrated Bullion Committee. The issues of the Bank, which on the 31st of August, 1808, were 17,111,290*l.*, had increased to 19,574,180*l.* in the following year, and on the 31st of August, 1810, amounted to 24,793,990*l.*, being an increase of about 45 per cent. in two years—a cause quite sufficient to account for their depreciation. In 1811 the circulation was diminished to 23,286,850*l.*, and the discount was reduced to 7¾ per cent. A further issue again depressed the value of Bank notes, as compared with gold: on the 31st of August, 1814, the amount in circulation was 28,368,290*l.*, and the depreciation amounted to 25 per cent. It is seldom that cause and effect can be thus clearly shown in relation to each other. In consequence of the material fall in the value of agricultural produce, which took place in 1813 and 1814, such serious losses were sustained by the country bankers in various parts of the country, that in 1814 and the two following years 240 of them failed; and the general want of confidence thus occasioned, so far widened the field for the circulation of Bank of England notes, that although the amount of them in circulation increased, in 1817, to 29,543,780*l.*, their value relatively to that of gold was nearly restored.

In 1817, having accumulated nearly twelve millions of coin and bullion, the Bank gave notice, in the month of April, that all notes of 1*l.* and 2*l.* value, dated prior to 1816, might be received in gold. In the September following, a further notice was given that gold would be paid for notes of every description dated prior to 1817. The effect of these measures was to drain the Bank of a large portion of its bullion, so that in August, 1819, no more than 3,595,960*l.* remained in its coffers, and an act was hurried through parliament to restrain the Bank from acting any further in conformity with the notices here mentioned.

In the same year the bill was passed, commonly known as Mr. Peel's Bill, which provided for the gradual resumption of cash payments. Under the provisions of this law, the Bank Restriction Act was continued in force until the 1st of February, 1820; from that time to the 1st of October in the same year, the Bank was required to pay its notes in bullion of standard fineness at the rate of 4*l.* 1*s.* per ounce; from the 1st of October, 1820, to the 1st of May, 1821, the rate of bullion was reduced to 3*l.* 19*s.* 6*d.* From the last-mentioned day, bullion might be demanded in payment for notes at the Mint price of 3*l.* 17*s.* 10½*d.* per ounce; and on the 1st of May, 1823, the current gold coin of the realm might be demanded.

The provisions of this act, as here mentioned, were respectively anticipated in point of time, and on the 1st of May, 1821, the Bank recommenced the payment of their notes in specie.

One of the provisions of this act arose out of a suggestion made by the late Mr. Ricardo, which appears calculated to afford every requisite security against the evils to which any system of paper currency is exposed. The effect of Mr. Ricardo's plan would have been to exclude a metallic currency, with the exception of what might be necessary for effecting small payments, by making Bank of England notes a legal tender, with the obligation imposed on the directors to pay them, on demand, in gold bars of the proper standard, and of a weight not less than sixty ounces for any one payment. This provision, which was temporarily adopted in Mr. Peel's bill, would effectually prevent any depreciation of the notes, and might have a peculiarly good effect in all times of *political* panic, when the greatest part of the mischief arises from the numerous holders of small amounts of notes, and who, on the plan proposed, would be unable, individually, and without some extensive combination for the purpose, to drain the Bank of its treasure. No good reason has ever been yet given to the public against the permanent adoption of this economical suggestion.

On the 22nd of May, 1832, a Committee of Secrecy was appointed by the House of Commons to inquire into the expediency of renewing the charter of the Bank of England, and into the system on which banks of issue in England and Wales are conducted. On the 11th of August following this Committee delivered its report, which was printed by order of the House, and it is to this report, with the evidence and documents by which it was accompanied, that the public is mainly indebted for the establishment of consistent and sound principles upon the subject of banking. Containing, as it does, the opinions of our first authorities in matters of political science, and the recorded experience of practical men, this paper was of the greatest advantage to the members of the legislature while discussing and determining the provisions of the act which received the royal assent on the 29th of August, 1833, for renewing the charter of the Bank of England for ten years from the 1st of August, 1834 (3 & 4 Wm. IV. c. 98), a brief analysis of which act it may be advisable here to insert; and we shall afterwards insert the provisions of the Bank Charter Act of 1844.

The act of 1833 provided that no association, having more than six partners, shall issue bills or notes, payable on demand, in London, or within sixty-five miles of that city, during the continuance of the exclusive privileges granted to the Governor and Company of the Bank of England. But associations, "although consisting of more than six persons, may carry on the trade or business of banking in London, or within sixty-five miles thereof, provided they do not borrow, owe, or take up in England any sum of money upon their bills or notes payable on demand, or at any less time than six months from the borrowing thereof, during the continuance of the privileges granted by this act to the Governor and Company of the Bank of England."

All promissory notes of the Bank of England, payable on demand, issued at any place in England, out of London, where the business of banking shall be carried on for or on behalf of the Bank, must be made payable at the place where such notes are issued; and it is made unlawful for the Governor and Company of the Bank of England, or for any person on their behalf, to issue, at any place out of London, any promissory note payable on demand, not made payable at the place where the same is issued.

§ 6 provided that Bank of England notes shall be a legal tender except at the Bank and its branches.

§ 7 exempted from the usury laws bills not having more than three months to run. § 8 provided for the preparation of weekly returns of bullion and of notes in circulation, to be sent to the Chancellor of the Exchequer, and published in the *London Gazette;* § 9, for the repayment of one-fourth part of the debt due from the public to the Bank (14,686,800*l.*). § 10 contained provisions for reducing the

capital stock of the Bank from 14,553,000*l.* to 10,914,750*l.*, by dividing amongst the proprietors the sum of 3,638,250*l.*, at the rate of 25*l.* for every 100*l.* stock; and §§ 11 and 12 exempted the governor, deputy-governor, &c., and proprietors, from being disqualified by such reduction in the amount of their stock.

By § 13 the Bank, in consideration of the privileges given it by this act, was required to deduct 120,000*l.* annually on the sum payable to it for the management of the funded debt. § 14 continued to the Bank the privileges conferred on it by 39 & 40 Geo. III. c. 28, and other acts, except in so far as they were altered by the present act, such privileges to be subject to redemption "at any time upon twelve months' notice to be given after the 1st of August, 1855;" and upon repayment by parliament of the sum of 11,015,100*l.*, due from the public to the Bank, and some other conditions being fulfilled, the privilege granted by this act was to cease. This clause is re-enacted in the act of 1844.

The clause which provides that notes of the Bank of England and its branches shall be a legal tender in every part of England, as explained by the act already recited, excited considerable interest among commercial men, some of whom expressed alarm at the provision. The expression "legal tender," although certainly correct, was an unfortunate term, as it seemed to threaten the mercantile public with the return of those days of ruinous uncertainty in regard to currency, which were so commonly experienced throughout the period when, under the Restriction Act, Bank of England notes were in effect a legal tender in every part of the kingdom. The only possible effect of an injurious kind which can attend this regulation is, that in the event of such a conjuncture as shall render the Bank unable to meet its engagements, the holder of its notes, who may chance to be removed one or two days' journey from London or the place where they were issued, may be placed in an unfavourable position for exchanging them for specie.

The principal advantage to follow from the enactment is this:—that it absolves the Bank of England from the expensive necessity in which it was formerly placed, of providing bullion to meet every run that might be made upon all the country bankers in every part of the kingdom, who, under the present law, may pay the demands on them in Bank of England notes, instead of in specie, as they were formerly obliged to do.

The repayment of one-fourth of the debt due from the public to the Bank was made by an assignment of 3 per cent. stock, which was previously held by the commissioners for the reduction of the national debt, but no division of the amount has yet been made among the proprietors of the Bank capital, who have judged it most advisable to leave the sum thus rendered available as capital in the hands of the directors.

The principal advantage conferred on the Bank by the legislature consisted in the restriction that prevents any other establishment, having more than six partners, from issuing notes payable on demand in or within sixty-five miles of London.

We learn from the evidence given before the secret committee by certain of the Bank directors, that the principle upon which they proceed in regulating their issues is to have as much coin and bullion in their coffers as may amount to a third part of the liabilities of the Bank, including sums deposited as well as notes in circulation. But when, by an over-issue of paper, prices have been so driven up that gold has become the only profitable species of remittance abroad, experience shows us that the drain upon the Bank thus arising may and will be carried to an extent far beyond the mere redundancy of currency afloat, and the demand for specie may, in such a case, be carried beyond the amount thus arbitrarily chosen for the security of the Bank. Where a vigilant course of management is pursued, a small comparative amount of gold would always suffice to restore the equilibrium, when deranged by the accidental changes of commerce; and where a different system is pursued, it is difficult to say what quantity of the precious metals, short of the whole liabilities of the Bank, will be found ade-

quate to that end. The action of the public upon the Bank in 1825, when the largest amount of bullion ever before possessed by it was so near being wholly exhausted, shows the necessity of adopting some less questionable rule than the arbitrary one-third.

The Bank of England acts as the agent of the Government in the management of the national debt. It receives and registers transfers of stock from one public creditor to another, and makes the quarterly payments of the dividends. Previous to the passing of the act of 1833, the Bank received from the public in payment for this service the sum of 248,000*l.* per annum. Of this amount 120,000*l.* per annum was abated by that act; and by the act of 1844 only 180,000*l.* is to be paid in future.

The balances of money belonging to the State are kept in the Bank, which in this respect performs the ordinary functions of a private banker. The alteration made a few years ago in the constitution of the department of the Exchequer added somewhat to this branch of the Bank's business. Many individuals likewise use this establishment as a place of deposit for their money; but as the Bank directors do not give the same facilities to their customers as they receive from private bankers, the proportion of mercantile men who have drawing accounts with the Bank is comparatively small.

Branch banks were established by the Bank of England, in 1826, 1827, and 1829, at Swansea, Gloucester, Manchester, Birmingham, Liverpool, Bristol, Leeds, Exeter, Newcastle, Hull, and Norwich; and in 1834, at Portsmouth and Plymouth, when the branch at Exeter was closed; and more recently a branch has been opened at Leicester. These establishments have not hitherto been productive of much profit to the corporation, but have proved very convenient to the public. They facilitate the remittance of money between London and the country, and enable commercial men to avoid the expense and risk which previously were attached to those operations. As the Branch banks do not permit individuals to overdraw their accounts, and make no allowance of interest upon deposits, they are not calculated greatly to interfere with the profits of private establishments, whose customers enjoy those advantages. The business of these branches principally consists in discounting bills, issuing notes which are payable in London and in the place where they are issued, and in transmitting money to and from London. To encourage the circulation of their own notes, these branches are accustomed to discount at a more advantageous rate than for others bills brought to them by such country bankers as do not themselves issue notes.

The profits of the Bank of England are derived from discounts on commercial bills; interest on Exchequer Bills, of which a large amount is usually held; the interest upon the capital stock in the hands of Government, the allowance for managing the public debt, interest on loans, on mortgages, dividends on stock in the public funds, profit on purchases of bullion, and some minor sources of income.

The principal heads of receipt in 1832 were as follows:—Interest on commercial bills 130,695*l.*; on exchequer bills 204,109*l.*; the dead weight annuity 451,515*l.*; interest on capital received from government 446,502*l.*; allowance for management of the public debt 251,896*l.*; interest on private loans 56,941*l.*; on mortgages 60,684*l.*; making, with some other items, a total of 1,689,176*l.* In the same year the expenses, including losses by forgery and sundry items, were 428,674*l.*; the composition for stamp-duty was 70,875*l.*; and 1,164,235*l.* was divided amongst the proprietors. In the first of the above heads is included the expense for conducting the business of the funded debt 164,143*l.*; the expense attending the circulation of promissory notes and post bills, 106,092*l.*; and the expense of the banking department, of which the proportion for the public accounts may be estimated at 10,000*l.*; making a total of 339,400*l.* Before the passing of the act of 1844, the Bank paid to the Stamp Office upwards of 70,000*l.* annually as a composition for the duties upon its notes and bills; but the notes of the Bank

are now wholly exempted from stamp duty.

In 1832 the Bank maintained an establishment of nearly one thousand officers, clerks, porters, and messengers; and the number has since been increased. In the same year the salary of 940 persons employed at the Bank and its branches amounted to 211,903*l.*, or, on an average, to 225*l.* each; and 193 persons, principally superannuated clerks, received 31,243*l.* per annum, or 161*l.* each.

In 1694 the stockholders divided 8 per cent., which was increased to 9 per cent. in the following year; from that time to 1729 the annual dividend fluctuated between 5½ and 9 per cent.; for the next eighteen years the rate was 5½ to 6 per cent.; in 1747 it fell to 5 per cent.; in 1753 to 4½ per cent., which was the lowest rate of profit since its first establishment; from 1767 to 1806 the dividend was gradually increased to 7 per cent., and from 1807 to 1822 the proprietors divided 10 per cent. annually: in 1823 the rate was lowered to 8 per cent., and has so continued to the present time. In addition to these payments, the stockholders have at various times received bonuses to the amount of 6,694,380*l.*, or 57½ per cent. upon the subscribed capital.

The directors of the Bank of England have always declared and acted upon the opinion that secrecy in regard to its condition is important to its prosperity. To such an extent has this feeling been carried, that year after year large and increasing dividends were declared and paid, without the exhibition to the proprietors of a single figure by which such a course could be justified, the simple recommendation of the directors having always satisfied the proprietors as to the policy of preserving this mystery. The printing of the Report of the Committee of Secrecy in 1832 revealed the true condition of the corporation, and it is not likely that the directors will ever again be allowed to involve its proceedings in the same degree of concealment.

The Bank of England Charter Act (7 and 8 Vict. c. 32), which received the royal assent on the 19th of July, 1844, remodels the Bank and establishes a separate department for the issue of notes. This Act is entitled "An Act to regulate the Issue of Bank Notes, and for giving to the Governor and Company of the Bank of England certain privileges for a limited period."

"After the 31st of August, 1844, the issue of promissory notes of the governor and company of the Bank of England, payable on demand, shall be separated and thenceforth kept wholly distinct from the general banking business; and the business of and relating to such issue shall be thenceforth conducted and carried on by the said governor and company in a separate department, to be called 'The Issue Department of the Bank of England;' and it shall be lawful for the court of directors of the said governor and company, if they shall think fit, to appoint a committee or committees of directors for the conduct and management of such issue department of the Bank of England, and from time to time to remove the members, and define, alter, and regulate the constitution and powers of such committee, as they shall think fit, subject to any bye-laws, rules, or regulations which may be made for that purpose: provided, nevertheless, that the said issue department shall always be kept separate and distinct from the banking department of the said governor and company." (§ 1.)

On the 31st of August, 1844, "There shall be transferred, appropriated, and set apart by the governor and company to the issue department of the Bank of England securities to the value of 14,000,000*l.*, whereof the debt due by the public to the said governor and company shall be and be deemed a part; and there shall also at the same time be transferred, appropriated, and set apart by the said governor and company to the said issue department so much of the gold coin and gold and silver bullion then held by the Bank of England as shall not be required by the banking department thereof; and thereupon there shall be delivered out of the said issue department into the said banking department of the Bank of England such an amount of Bank of England notes as, together with the Bank of England notes then in circulation, shall be equal to the aggregate amount of the

securities, coin, and bullion so transferred to the said issue department of the Bank of England; and the whole amount of Bank of England notes then in circulation, including those delivered to the banking department of the Bank of England as aforesaid, shall be deemed to be issued on the credit of such securities, coin, and bullion so appropriated and set apart to the said issue department; and from thenceforth it shall not be lawful for the said governor and company to increase the amount of securities for the time being in the said issue department, save as hereinafter is mentioned, but it shall be lawful for the said governor and company to diminish the amount of such securities, and again to increase the same to any sum not exceeding in the whole the sum of 14,000,000*l.*, and so from time to time as they shall see occasion; and from and after such transfer and appropriation to the said issue department as aforesaid it shall not be lawful for the said governor and company to issue Bank of England notes, either into the banking department of the Bank of England, or to any persons or person whatsoever, save in exchange for other Bank of England notes, or for gold coin or for gold or silver bullion received or purchased for the said issue department under the provisions of this act, or in exchange for securities acquired and taken in the said issue department under the provisions herein contained: provided always, that it shall be lawful for the said governor and company in their banking department to issue all such Bank of England notes as they shall at any time receive from the said issue department or otherwise, in the same manner in all respects as such issue would be lawful to any other person or persons." (§ 2.)

§ 3 fixes the proportion of silver bullion to be retained in the issue department, and on which bank notes may be issued at one-fourth part of the gold coin and bullion, and not to exceed that proportion.

§ 4 provides that all persons may demand of the issue department notes in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold, to be melted and assayed at the expense of the parties tendering such gold by persons approved of by the bank.

§ 5 gives the bank power to increase securities in the issue department, and issue additional notes in case any banker who, on the 6th of May, 1844, was issuing his own notes, shall afterwards cease to issue. Under these circumstances the bank may be empowered by an order in council to increase the amount of securities beyond the sum of 14,000,000*l.*, and thereupon to issue additional Bank of England notes to an amount not exceeding such increased amount of securities specified in such order in council, and so from time to time; provided always, "that such increased amount of securities specified in such order in council shall in no case exceed the proportion of two-thirds the amount of bank-notes which the banker so ceasing to issue may have been authorized to issue under the provisions of this act; and every such order in council shall be published in the next succeeding 'London Gazette.'"

Accounts are to be rendered weekly by the Bank of England, which are to be published in the 'London Gazette.' (§ 6.)

§ 7 exempts the bank from stamp duty upon their notes.

In consequence of the various privileges granted by the act, the bank is to deduct 180,000*l.* from the expense of managing the unfunded debt, instead of the sum of 120,000*l.* fixed by 3 & 4 Will. IV. c. 98 (§ 8); and further, by § 9 the bank is to allow the public the net profits of increased circulation allowed under § 5 beyond the sum of 14,000,000*l.* fixed by the act.

§ 10 prohibits the establishment of any new bank of issue. "No person other than a banker who on the 6th of May, 1844, was lawfully issuing his own bank notes, shall make or issue bank notes in any part of the United Kingdom;" and § 11 regulates the mode of issuing notes by those bankers who issued notes on the 6th of May, 1844, who may "continue to issue such notes to the extent and under the conditions hereinafter mentioned, but not further or otherwise; and the right of any company or partnership to continue to issue such notes shall not be in any manner prejudiced or affected by any

change which may hereafter take place in the personal composition of such company or partnership, either by the transfer of any shares or share therein, or by the admission of any new partner or member thereto, or by the retirement of any present partner or member therefrom: provided always, that it shall not be lawful for any company or partnership now consisting of only six, or less than six persons, to issue bank notes at any time after the number of partners therein shall exceed six in the whole." Bankers ceasing to issue notes may not resume issuing, either by agreement with the bank or otherwise. (§ 12.) And existing banks of issue are to continue under strict limitations. Their average circulation for twelve weeks preceding the 27th of April is to be ascertained, when the commissioners, or any two of them, shall certify the amount to the banker, who may then issue his own bank notes after the passing of this Act; "provided that such banker shall not at any time after the 10th of October, 1844, have in circulation upon the average of a period of four weeks a greater amount of notes than the amount so certified. (§ 13.) There is a provision in § 14 for banks which had become united within the twelve weeks preceding the 27th of April, and such united banks may obtain a certificate of their joint circulation, which the united bank will be authorized to issue: a copy of the certificate is to be published in the 'London Gazette.' (§ 15.) In case banks become united after the passing of this Act, the commissioners are also to certify the amount of bank notes which each bank was authorized to issue; and the united bank is to have the benefit of issuing to the amount of their joint circulation. (§ 16.)

A penalty is imposed on banks issuing in excess, the amount of the penalty to be equal to the excess of the average monthly circulation. (§ 17.)

After the 19th of October, 1844, issuing banks are to render accounts to the Commissioners of Stamps and Taxes of the amount of their notes in circulation on every day during the week, and also an account of the average amount of the bank notes in circulation during the same week, and a like average for every period of four weeks, and the amount of bank notes which such banker is authorized to issue under the Act is to be given in such return. The weekly average is to be published in the 'London Gazette.' The penalty for making a false return is 100*l.* (§ 18): and § 20 empowers the Commissioners of Stamps and Taxes, with the consent of the Treasury, to cause the books of bankers containing accounts of their bank notes in circulation to be inspected; and there is a penalty of 100*l.* for refusing to allow such inspection.

All bankers are to return their names once a year (in the first fifteen days of January) to the Stamp-office, and a copy of such return is to be published in some newspaper circulating within each town or county where the business is carried on. (§ 21.)

All bankers who shall be liable by law to take out a licence from the Commissioners of Stamps and Taxes to authorize the issuing of notes or bills, are to take out a separate licence for every place at which they issue notes or bills; but there is a proviso in favour of bankers who had four such licences in force on the 6th of May, 1844, and they will not be called upon to take out a larger number. (§ 22.)

Compensation is made to certain bankers named in the schedule C who had ceased to issue their own notes under certain agreements with the Bank of England before the passing of this Act. (§ 23.)

The Bank of England is allowed to compound with issuing banks which agree to issue Bank of England notes as a consideration for the relinquishment of the privilege of issuing private bank notes; the composition to be at the rate of one per cent. on the amount of Bank of England notes issued, but such issues to be restricted according to § 13.

Banks within sixty-five miles of London may draw, accept, or endorse bills, not being payable to bearer on demand. (§ 26.)

§ 27 relates to the expiration of the Bank Charter. "At any time upon twelve months' notice to be given after the 1st of August, 1855, and upon repay-

ment by parliament to the governor and company, or their successors, of the sum of 11,015,100*l.*, being the debt now due from the public to the said governor and company, without any deduction, discount, or abatement whatsoever, and upon payment to the said governor and company and their successors, of all arrears of the sum of 100,000*l.* per annum," and other moneys due to the Bank, "then and in such case, and not till then, the said exclusive privileges of banking granted by this Act shall cease and determine at the expiration of such notice of twelve months."

The Gazette of September 14th, 1844, contained the first account of the affairs of the Bank pursuant to the above act: it showed the state of the Bank for the week ending the 7th of September, and was as follows:—

Dr. Issue Department.		£.
Notes issued		28,351,295
Cr.		
Government debt		11,015,100
Other securities		2,984,900
Gold coin and bullion	£ 12,657,208	
Silver bullion	1,694,087	
		14,351,295
		28,351,295

Dr. Banking Department.	£
Proprietors' capital	14,553,000
Rest	3,564,729
Public deposits (including Exchequer, Savings' Banks, Commissioners of National Debt, and Dividend Accounts)	3,630,809
Other Deposits	8,644,348
Seven-day and other bills	1,030,354
	31,423,240
Cr.	14,554,834
Government securities (including dead weight annuity)	14,554,834
Other securities	7,835,616
Notes	8,175,025
Gold and silver coin	857,765
	31,423,240

The most important parts of the act 7 & 8 Vict. c. 32, it will be seen are:—1. The separation of the issuing and the banking functions of the Bank of England, with strict limitations as to its issues, and a different system of account and different officers for each department. The Bank has the power of issuing notes on a fixed amount of securities to the value of 14,000,000*l.*, and any issue beyond this sum must be founded on bullion only. As the stock of bullion in the bank increases or diminishes, so will likewise the issues of bank-notes. 2. The next point of importance is the absolute prohibition of any new bank of issue and the limitation of the issues of all existing banks of issue to an average of the circulation of each bank for the twelve weeks preceding April 12th, 1844. 3. Joint-stock banks in London are empowered to accept bills for any period, instead of such bills being confined to dates of not less than six months. Such are the chief features of the system now in operation, the practical working of which, in the course of the ensuing ten years, will be watched with much interest. Another remodelling of the Bank may then again take place according to the act, and an opportunity again be afforded for effecting further changes in banking institutions.

IV. *Banking, as carried on by private establishments and joint-stock associations in London, in other parts of England and in Ireland.*—The Italian merchants who, under the name of Lombards, settled in England during the thirteenth century, and previously to that time the Jews, performed the greatest part of the money business of the country. They were not, however, bankers in the modern acceptation of the word, and in fact the business of banking does not appear to have been carried on among us earlier than the middle of the seventeenth century. The goldsmiths of London, who before that time had restricted their trade in money to the purchase and sale of foreign coin, then extended their business by borrowing and lending money. The latter part of their business—that of lending—was principally transacted with the king, to whom they made advances on the security of the taxes. They allowed

interest to the individuals from whom they borrowed, and the receipts which they gave for deposits passed from hand to hand in the same manner as Bank-notes have since circulated.

The taking of interest for the use of money was not rendered legal in England until 1546, when the rate that could be demanded was fixed at 10 per cent. In 1624 the legal rate was reduced to 8 per cent., and a further reduction to 6 per cent. took place in 1651. At this rate it still remains in Ireland, but was lowered in England to 5 per cent. in 1714, at which it now continues. These limitations have always been productive of evil. Money-lenders by profession will always be ready to take advantage of the necessities of borrowers, and being left without competitors among the more conscientious capitalists, demand not only a monopoly price for the use of their money, but also a further sum proportioned to the risk and penalties attending discovery. The Lombard merchants were accustomed to demand 20 per cent. interest, and even more, according to the urgency of the borrower's wants.

The merchants of London had been used to deposit their money for security at the Mint in the Tower of London, whence they drew it out as occasion demanded; but in the year 1640 King Charles I. took possession of 200,000*l.* thus lodged, which of course put a stop to that practice. This state of things preceded and most probably led to the extension of the business of the goldsmiths, as just explained.

This business soon became very considerable, and was found convenient to the government. In 1672 King Charles II., who then owed 1,328,526*l.* to the bankers, borrowed at 8 per cent., shut up the Exchequer and for a time refused to pay either principal or interest, thus causing great distress among all classes of people. Yielding to the clamour raised against this dishonesty, the king at length consented to pay 6 per cent. interest, but the principal sum was not discharged until forty years afterwards.

The number of private banks in London about 1793 was fifty-six, of which only twenty-four are now in existence. The number is at present seventy-four, including seven colonial and eight joint-stock banks. There are three private banking-houses still carrying on business which were established before the Bank of England. These are Child's, established in 1663; Hoare's, in 1680; and Snow's, in 1685. The London bankers continued to issue notes for some time after the closing of the Exchequer, but they have long since ceased to do so, acting solely as depositaries of money, discounters of bills, and agents for bankers established in the country. No restriction has ever existed which prevents private banks in London, if they have not more than six partners, from issuing their notes payable to bearer; that they have ceased to do so has arisen from the conviction that paper money, issued on the security of only a small number of individuals, could not circulate profitably in competition with that of a powerful joint-stock association.

The business of a bank may be classed under the following heads:—1. Discounting bills of exchange. 2. Advancing money on cash credits. 3. Receiving deposits at interest. 4. Keeping current accounts for customers. 5. Issuing notes. 6. Acting as agents for others. Private bankers in London do not make any charge of commission to their customers, and generally grant facilities to them, both by discounting bills and by temporary loans, either with or without security. Even where this kind of accommodation is not required, it is almost a matter of necessity for every merchant or trader carrying on considerable business to have an account with a banker, through whom he makes his payments, and who will take from him the daily trouble of presenting bills and cheques for payment.

At various times some banking establishments in London have adopted the principle of allowing interest upon deposits placed in their hands. The practice of most of the joint-stock banks is to allow a moderate interest, depending on the market-value of money, for any sum exceeding 100*l.*, provided that it is not withdrawn by the depositor in less than three months. Some of these banks receive deposits as low as 10*l.*; and

others allow a higher rate of interest on small than on larger sums. It is expressly stipulated by bankers in these cases that the rate of interest on the sum deposited will be liable to fluctuation according to the state of the money-market. The joint-stock banks also allow interest at the rate of one or two per cent. on the smallest balance on current accounts, if the balance has stood for a month; and some of them allow interest on the average daily balance for a month.

The profits of London bankers are principally derived from discounting mercantile bills, either for their customers, or, through the intervention of brokers, for other parties. They have great facility as regards the security of this business, from the unreserved confidence which they are accustomed to place in one another as to the credit of their respective customers.

The great amount of money transactions daily carried on in London, and which has been estimated at nearly five millions, has led to the invention of a simple and ingenious method for economizing the use of money, which is carried into effect at an establishment set on foot by the private bankers in 1770, called the Clearing-house. The present Clearing-house is situated in the corner of a court at the back of the Guardian Insurance Office, in Lombard Street. The business was previously conducted in an apartment in the banking-house of Messrs. Smith, Payne, and Smiths, and still earlier at the banking-house of Messrs. Barnetts and Co., both in Lombard Street. The cheques and bills of exchange, on the authority of which a great part of the money paid and received by bankers is made, are taken from each of the clearing-bankers to the Clearing-house several times in the day, and the cheques and bills drawn on one banker are cancelled by those which he holds on others. The joint-stock banks are excluded from this association of private bankers. Some of the private bankers, from the nature of their business, do not require the aid which these clearances afford, and others are too distant to maintain the necessary rapidity of communication with the Clearing-house. An authentic detail of the arrangements of the Clearing-house has recently been published by Mr. Tate ('The System of the London Bankers' Clearances explained and exemplified'), to which we must refer those who desire something more than a general idea of the system. The Clearing-house is fitted up with desks for each of the present twenty-seven clearing-bankers, whose names, taking the first of each firm, are arranged in alphabetical order as follows, over each desk:—

Barclay	Glyn	Rogers
Barnard	Hanbury	Smith
Barnetts	Hankey	Spooner
Bosanquet	Jones	Stevenson
Brown	Lubbock	Stone
Curries	Masterman	Veres
Denison	Prescott	Weston
Dorrien	Price	Williams
Fuller	Robarts	Willis.

Mr. Tate says, "The rapidity with which the last charges are required to be entered, and the bustle which is created by their swift distribution through the room, are difficult to be conceived. It is, then, on the point of striking four, and on days of heavy business, that the beauty of the alphabetical arrangement of the clearers' desk is to be seen. All the distributors are moving the same way round the room, with no further interference than may arise from the more active pressing upon or outstripping the slower of their fellow-assistants. With equal celerity are their last credits entered by the clearers. A minute or two having passed, all the noise has ceased. The deputy-clearers have left with the last charges on their houses; the clearers are silently occupied in casting up the amounts of the accounts in their books, balancing them, and entering the differences in their balance-sheets, until at length announcements begin to be heard of the probable amounts to be received or paid, as a preparation for the final settlement. The four o'clock balances having been entered in the balance-sheet, each clearer goes round to check and mark off his accounts with the rest, with 'I charge you,' or 'I credit you,' according as each balance is in his favour or against him."

In the Appendix to the Second Report of the Select Committee of the House of Commons on Banks, there is a return of the payments made through the Clearing-house for the year 1839, and, omitting all sums under 100*l.*, the total was 954,401,600*l.* The average for each day would consequently be rather more than 3,000,000*l.* sterling (the actual payments range from 1,500,000*l.* to 6,250,000*l.*), while that of the sums actually paid was about 213,000*l.* It has, however, sometimes happened that a single house has had to pay above half a million of money. The payments through the Clearing-house of three bankers, in 1839, ranged from 100,000,000*l.* to 107,000,000*l.* each. In 1840, according to a pamphlet on the currency by the late Mr. Leatham, banker, of Wakefield, the returns of the Clearing-house reached to the enormous sum of 975,500,000*l.*

There were very few country bankers established previous to the American war, but after the conclusion of that contest their numbers increased greatly. In 1793 they were subjected to heavy losses, consequent upon the breaking out of the French war, and twenty-two of them became bankrupt. The passing of the Bank Restriction Act was the signal for the formation of many establishments for banking in the country. In 1809, the first year when bankers were required to take out a licence, the number issued was 702, which gradually rose to 940 in 1814. In 1813-14 the number of licences taken out by country bankers for issuing notes was 733, and the number of partners in these banks was 2234. In 1814 and the two following years, eighty-nine country bankers failed, and their numbers fell off greatly. In each of the years 1825 and 1826 there were about 800 annual licences issued, but their numbers were again reduced by eighty bankruptcies, and in 1832 only 636 licences were demanded. From 1839 to 1843 inclusive the number of bankers gazetted as bankrupts was 82; and the number of banks of issue which failed during the same period was 29. In August, 1844, there were 117 private banks of issue in the United Kingdom; and there were 162 private banks which were not banks of issue. The number of private banks from 1826 to 1842 is given at the end of this section.

Country banks in England are all of them banks of deposit and of discount; they act as agents for the remittance of money to and from London, and for effecting payments between different parts of the kingdom. A large number of them are also banks of issue, and their notes are in many cases made payable at some banking-house in London, as well as at the place where they are issued. The new regulations under which the issues of banks of all kinds are placed by 7 & 8 Vict. c. 32, have already been given in the analysis of the act, §§ 10 to 17 inclusive. The First Lord of the Treasury, in his speech of May 20, 1844, adopted them avowedly on the ground that, in periods when the principle of convertibility has been endangered, the country banks were unwilling or incompetent to reduce their issues.

A moderate rate of interest, from 2 to 2½ per cent., is allowed by country bankers upon deposits which remain with them for any period beyond six months: some make this allowance for shorter periods. Where a depositor has also a drawing account, the balance is struck every six months, and the interest due upon the average is placed to his credit. Upon drawing accounts, a commission, usually of a quarter per cent., is charged on all payments. The country banker, on his part, pays his London agent for the trouble which he occasions, either by keeping a certain sum of money in his hands without interest, or by allowing a commission on the payments made for his account, or by a fixed annual payment in lieu of the same.

The portion of funds in their hands arising from deposits and issues which is not required for discounting bills and making advances in the country, is invested in government or mercantile securities in London, which, in the event of a contraction of deposits or issues, can be made immediately available.

The establishment of banks throughout the kingdom has contributed materially to the growth of trade. Without them it would hardly be possible for a manufac-

turer employing any great number of hands to collect the money required to pay the weekly wages of his people. It is not a valid argument against their utility that occasionally, by the facilities they have afforded, the tendency to overtrading has been encouraged.

In 1826 the 7 Geo. IV. c. 6, provided for the gradual withdrawal of small notes from circulation, by prohibiting the future issue of any stamps for that purpose, and declared that their issue should wholly cease on the 5th of April, 1829. It was on the occasion of the introduction of this act that the Bank of England undertook, at the recommendation of government, to establish branches of its own body in different parts of the country.

The practical effect of this measure of preventing the circulation of notes below 5*l.* value, has been to lessen, in an important degree, the issues of country bankers. Previously to their suppression, the small notes formed more than one-half the circulation of country banks, whose issues have not, however, been reduced in that proportion, owing to an enlarged amount of 5*l.* notes being taken by the public: the reduction, on the whole, has been estimated at 30 per cent. It is generally acknowledged by country bankers themselves, that the description of notes withdrawn formed by far the most dangerous part of their issues; that in the event of any *run* or panic, the notes of 1*l.* value were always first brought in for payment, and that, in consequence, the situation of the country banker is now one of much greater security than it was while small notes were issued. The country bank notes in circulation in 1810 amounted to 23,893,868*l.* In July, 1844, the issues of private banks was 4,624,179*l.* and of joint-stock banks 3,340,326*l.*, being together less than eight millions. In February of the same year there were forty-three provincial bankers which, by an arrangement with the Bank of England, agreed to issue the notes of that establishment exclusively, to the amount of 2,429,000*l.*

Up to 1832 no local circulation existed in the great manufacturing and trading county of Lancashire, where Bank of England notes alone passed from hand to hand, but a great number of payments were adjusted by means of bills of exchange drawn upon or made payable by London houses. Subsequently some of the joint-stock banks of Manchester and Liverpool issued notes.

By 3 & 4 Will. IV. c. 83, banks issuing promissory notes were required, for the first time, to make quarterly returns to the Stamp-office of the average amount of notes in circulation; the quarterly average to be founded on the amount in circulation at the end of each week. The 4 & 5 Vict. c. 50, required the returns to be made at the end of every four weeks. The 7 & 8 Vict. c. 32, § 18, requires returns to be made of the notes in circulation on every day in each week; the average for the week; and a like average for every four weeks, and, as will be seen, gives the Commissioners of Stamps the power of inspecting bankers' books.

At the time of passing the law for the suppression of small notes in England, provision was made by the legislature in the manner already described, for the establishment of joint-stock banks, which should be banks of issue, at any distance beyond sixty-five miles from London. In consequence of this act above one hundred joint-stock banking companies have been formed in England. About one hundred and thirty-eight private banks have been merged in joint-stock banks. The following table shows the number of joint-stock banks, &c. in the United Kingdom in January, 1839:—

	No. of Banks.	Branches, &c.	No. of Partners.
England...	105	648	32,142
Scotland...	29	117	6,971
Ireland....	18	143	11,755
Total ..	152	903	50,868

Of the 29 Scotch banks, one established by act of parliament, and four by royal charter, are not required to lodge lists of partners.

According to some valuable tables in the 'Bankers' Magazine' for August, 1844, the number of joint-stock banks in the United Kingdom at that date was as follows:—England and Wales, 106; Scotland, 20; Ireland, 10; and there were besides 10 joint-stock Colonial banks in London.

The following is given in a Parliamentary return as the number of private banks and joint-stock banks from 1826 to 1842:—

	Private Banks.	Joint-stock Banks.
1826	554	..
1827	465	6
1828	456	7
1829	460	11
1830	439	15
1831	436	19
1832	424	25
1833	416	35
1834	416	47
1835	411	55
1836	407	100
1837	351	107
1838	341	104
1839	332	108
1840	332	113
1841	321	115
1842	311	118

The average quarterly circulation of the private banks and joint-stock banks from September, 1834, to July, 1844, was as follows:—

Quarter ending Sept.	Private Banks. £	Joint-stock Banks. £
1834	8,370,423	1,783,689
1835	7,912,587	2,508,036
1836	7,764,824	3,969,121
1837	6,701,996	3,440,053
1838	7,083,811	4,281,151
1839	6,917,606	4,167,313
1840	6,350,801	3,630,285
1841	5,768,136	3,311,941
1842	5,098,259	2,819,749
1843	4,288,180	2,763,302
20th July, 1844	4,624,179	3,340,326

The system upon which the business of a joint-stock bank is conducted is the same generally as that pursued by private establishments; but it is, of course, more obligatory upon managers acting for others to adhere rigidly to system, than it is for an individual or a small number of partners without the same degree of responsibility.

The disasters which befel several of the joint-stock banks ought long ago to have led to some general measure for placing these institutions on a safe footing. In 1837 there scarcely existed any legislative restrictions on the operation of the act 7 Geo. IV. c. 46, permitting the establishment of joint-stock banks. A joint-stock bank could start into existence, whether for the purpose of deposit or issue, or of both, without any preliminary obligation beyond the payment of a licence-duty and the registration of the names of shareholders at the Stamp Office. A secret committee of the House of Commons, appointed in 1836 to inquire into the operation of the above-mentioned act, reported that the law did not require a revision of the deed of settlement by any competent authority; that there was no restriction on the amount of nominal capital, which varied from 100,000*l.* to 5,000,000*l.*, and in one case an unlimited power was reserved of issuing shares to any extent; that banking operations might be commenced before the whole or any certain amount of shares be subscribed for; that the law did not enforce any rule with respect to the nominal amount of shares, which varied from 5*l.* to 1000*l.*, nor with the amount of paid-up capital before the commencement of business, which varied from 5*l.* to 105*l.*, and that the law was not sufficiently stringent to ensure to the public that the names registered at the Stamp Office were the names of *bonâ fide* proprietors, who, having signed the deed of settlement, were responsible to the public. The committee also pointed out that the law did not limit the number of branches, or their distance from the central bank; and that the obligation of making their notes payable at the places of issue was disregarded.

By 1 Vict. c. 73, shareholders in joint-stock banks were rendered liable only to the extent of their shares, instead of the whole of their property being answerable; but up to the end of the parliamentary session of 1844, the joint-stock bank system laboured under a number of disadvantages, some of which are removed by the act 7 & 8 Vict. c. 113, "to regulate joint-stock banks in England." Every new Company is required by this act to present a petition to the Queen in Council, signed by at least seven of the shareholders, praying that letters patent may be granted to them, and specifying very fully the

names and abodes of all the partners of the proposed company; the proposed name of the bank, and where the business is to be carried on; the proposed amount of capital stock, and the means by which it is to be raised; the amount already paid up, and where and how invested; the proposed number of shares, and the amount of each share, not being less than 100*l.* The petition will be referred to the Board of Trade, who will report as to the provisions of the act having been complied with. The deed of partnership must be prepared according to a form to be approved of by the Board of Trade. Banks already existing may be remodelled under the provisions of the act. Joint-stock banks have now the privilege of suing and being sued. The acts of an unauthorized partner formerly bound all the rest of the partners; but now it is only the acts of an individual director properly appointed which are binding on the shareholders.

A national bank was established by charter in Ireland in 1783, with the same privileges as those granted to the Bank of England by the act of 1708. The original capital of this corporation was 600,000*l.*, and was lent to government at 4 per cent. interest. The management is vested in a governor, deputy-governor, and fifteen directors. In 1809 1,000,000*l.* was added to its capital. This sum, which was raised by subscription among the proprietors at the rate of 125 per cent., was also lent to government at 5 per cent. interest. In 1821 the capital was augmented to 3,000,000*l.*, and a further prolongation of the charter was granted in 1808.

The system adopted by and in regard to the Bank of England has on various occasions been extended to the Bank of Ireland. In 1797, when it became necessary to restrict the Bank of England from paying its notes in gold, that measure was, almost necessarily, adopted in Ireland, and in consequence the issue of the Bank of Ireland notes increased from 780,000*l.*, which it was in 1797, to upwards of 4,000,000*l.*, before the Suspension Act was ultimately repealed.

The total circulation of the Bank of Ireland for the week ending April 27, 1844, was 3,618,600*l.*, of which sum 1,917,000*l.* was circulated by the branches. The bullion in the bank coffers was 1,037,100*l.* and the total securities amounted to 7,250,700*l.*, consisting of 4,226,500*l.* public securities; 1,844,400*l.* notes and bills discounted; and 1,179,800*l.* of other securities. The total deposits were 3,555,300*l.*, of which 2,484,100*l.* were private, and 1,071,200*l.* public deposits. The Bank neither grants cash credits nor allows interest on deposits.

The suspension of specie payments led, as in England, to the establishment of numerous private banks in Ireland; fifty of these were in operation in 1804. The power of issuing notes was greatly abused by these banks, and the mischief thus occasioned was aggravated by other individuals issuing notes also. It was given in evidence by several persons before a committee of the House of Commons, that about this time there were 295 issuers of paper money in Ireland, whose notes were in some cases put forth for a few shillings, and occasionally even as low as 6*d.* and 3*d.* each. These issuers consisted of merchants, shopkeepers, and petty dealers of all descriptions. The consequences might easily have been foreseen; forgeries and frauds innumerable were committed, and it became necessary to put a legal stop to the practice. The mischief recoiled with severity upon the bankers, so that of the fifty who carried on business in 1804, only nineteen remained in 1812. A few had prudently withdrawn from business, but the remainder had failed; and of the nineteen here mentioned eleven became bankrupt in 1820. The number of private banks in Ireland is now only four.

The mischief and misery thus occasioned called loudly for the interference of government, and in 1821 an act was passed (1 & 2 Geo. IV. c. 72) by which joint-stock banking companies were allowed to be established at a distance of fifty Irish (sixty-three statute) miles from Dublin. This district comprises a population of about 1,500,000, and the Bank of Ireland has only six branches, while in the various towns of Ireland beyond sixty-three miles from Dublin there are above one hundred branches of joint-stock

banks. The Bank of Ireland has altogether twenty-four branches.

The act 1 & 2 Geo. IV. was at first inoperative, in consequence of its omitting to repeal several vexatious restrictions; and it was not until after the passing of a new act in 1824, by which this error was remedied, that a joint-stock banking company was established in Belfast with a capital of half a million. This was followed in 1825 by the formation of the Provincial Bank of Ireland, with a subscribed capital of two millions, one-fourth part of which has been paid up by the shareholders. The shareholders are principally resident in England, where the management of the bank is conducted, the chief officer being in London. This association carries on business in thirty-six of the principal cities and towns of Ireland beyond the prescribed distance from Dublin. Each branch is managed, under the control of the directors, by an agent, with the advice and assistance of two or more gentlemen residing in the district, each of whom holds at least ten shares in the bank. The system of business adopted is the same as is followed by the Scotch banks. The benefit to the country from the introduction and prudent employment of so much capital has been very great.

The notes of the Provincial Bank are received by the Irish government in payment for duties and taxes equally with the notes of the Bank of Ireland.

The great grievance of the Irish joint-stock banks is, that beyond sixty-three miles from Dublin they can neither draw nor accept bills for a less sum than fifty pounds, nor for any sum upon demand; and all such banks in Dublin, or within sixty-three miles, can neither issue notes nor accept or draw bills at all. When the charter of the Bank of Ireland again comes under the consideration of the legislature, some of these objectionable disabilities will probably be modified or removed.

There are ten joint-stock banks in Ireland, including the Bank of Ireland, and branch banks are established in one hundred and fifty-six different towns.

In the same year with the formation of the Provincial Bank, the directors of the Bank of Ireland, in 1825, began to establish branches in the country. The notes issued from these branches were not at first payable except in Dublin; but this inconvenience was rectified by the act 9 Geo. IV. c. 81, which makes it obligatory on all banks to pay their notes at the places where they are issued. This regulation, which does not apply to banks in Scotland, renders it necessary to keep at all times a considerable supply of gold at the branches; and from the political state of Ireland, this necessity is more particularly pressing. In 1828, during a 'run,' the Provincial Bank of Ireland sent over from the head-quarters in London no less a sum than 700,000*l.* in gold to its branches. In Scotland the notes would have been payable at the head-office, where specie is easier provided.

The law of 1826, forbidding the issue of notes under 5*l.* value, does not extend to Ireland.

Bank notes are not a legal tender in Ireland.

V. *Scotch system of Banking.*—There are three incorporated public banks in Scotland: one of these, called the Bank of Scotland, was established by act of the Scottish parliament in 1695; another, called the Royal Bank of Scotland, received a royal charter in 1727; and the third, the British Linen Company, was incorporated in 1746, for the purpose of undertaking the manufacture of linen, but now operates as a banking company only; its capital is 500,000*l.* None of the Scotch banks have exclusive privileges resembling those of the Bank of England and Bank of Ireland.

The capital of the Bank of Scotland was originally 1,200,000*l.* Scots, or 100,000*l.* sterling money, divided into 1200 shares. This capital has since been augmented at different times, and now amounts to 1,500,000*l.* sterling, but of this sum only one million has been paid up by the subscribers. This bank began to establish branches in 1696, and issued notes for 1*l.* each, in 1704. It also began very early to receive deposits, for which it allowed interest; and in 1729 it introduced the plan of granting credits on cash accounts, which now forms a principal feature of the Scotch banking system.

The nature of these cash accounts con-

sists in the bank giving credit on loan, to the extent of a sum agreed upon, to any individual or house of business that can procure two or more persons, of undoubted credit and property, to become surety for the repayment, on demand, of the sum credited, with interest. When a person has obtained this credit, he may employ the amount in his business, paying interest only upon the sum which he actually uses, and having interest allowed to him from the day of repaying any part of the loan. These loans are advanced in the notes of the bank, whose advantage from the system consists in the call which these credits produce for the issue of their paper, and from the opportunity which they afford for the profitable employment of part of their deposits. In order to render this part of their business as advantageous and secure as possible, it is necessary that the credits should be frequently operated upon; and if the managers of the bank find that they are used as dead loans to produce interest only, or that the operations of the borrower are infrequent, so that the amount of notes called for is inconsiderable during the year, they will speedily put an end to the credit, it being to the interest of the bank to keep up an active circulation of its notes.

These cash accounts are found to be very advantageous to traders, by supplying an additional capital, for the use of which they pay only in proportion to the amount of it which they employ.

The management of the Bank of Scotland is vested in a governor, deputy-governor, twelve ordinary and twelve extraordinary directors. They are chosen every year by the stockholders having 250*l.* of stock or upwards. The management of the various branches, which are opened in all the principal towns in Scotland, is confided to cashiers or agents.

The Royal Bank of Scotland had at first a capital of 150,000*l.*, which has since been increased to 2,000,000*l.* The system of business adopted by this establishment, and by the British Linen Company, is the same as that of the Bank of Scotland, which has already been described.

The act of 1708, which restrained any association having more than six partners from issuing notes payable to bearer, did not extend to Scotland, where banking companies, with numerous partners dealing on a joint-stock, have long existed. "There is no limitation upon the number of partners of which a banking company in Scotland may consist."—"The partners of all banking companies are bound, jointly and severally, so that each partner is liable, to the whole extent of his fortune, for the whole debts of the company. A creditor in Scotland is empowered to attach the real and heritable, as well as the personal estate of his debtor, for payment of personal debts, among which may be classed debts due by bills and promissory notes; and recourse may be had, for the purpose of procuring payment, to each description of property at the same time."—(*Commons' Committee on Scotch Banks*, 1826.)

In 1793 and 1825, when so many bankruptcies took place among country bankers in England, not one Scotch bank failed to make good its engagements. The Lords' Committee on Scotch Banks, in 1826, reported that "the banks of Scotland, whether chartered or joint-stock companies, or private establishments, have for more than a century exhibited a stability which the committee believe to be unexampled in the history of banking; that they supported themselves from 1797 to 1812 without any protection from the restrictions by which the Bank of England and that of Ireland were relieved from cash payments; that there was little demand for gold during the late embarrassments in the circulation; and that in the whole period of their establishment there are not more than two or three instances of bankruptcy, and as, during the whole of this period, a large portion of their issues consisted almost entirely of notes not exceeding 1*l.* or 1*l.* 1*s.*, there is the strongest reason for concluding, that as far as respects the banks of Scotland, the issue of paper of that description has been found compatible with the highest degree of solidity." In another respect the law which regulates the system of banking in Scotland differs from that in force in England. The act of 1826, which put an end to the circulation of notes under 5*l.*, does not extend to Scotland,

where a considerable part of the circulating medium of the country is composed of notes of 1*l.* value. The 9 Geo. IV. c. 65, prohibits the introduction of Scotch notes under 5*l.* into England.

All banking establishments in Scotland take in deposits and allow interest upon very small sums lodged with them, a fact which may account for the small number of savings' banks in that part of the kingdom. The interest allowed varies according to the current market-rate. The rate has sometimes been as high as 4 per cent., and as low as 2 per cent. There is said to be a sort of understanding that less than 5*l.* shall not be paid in or drawn out; but the projected Dunedin* bank proposes to pay or receive any sums, however small, charging only a "clerking fee" of 4*s.* 2*d.* on each hundred transactions. This bank is intended to command the agency of the Scottish joint-stock banks, and will not have branches. The Bank of Scotland about the middle of 1844 resolved not to allow interest upon cash deposited with them, until it has been at least a month in their possession. It is stated in the Report of the Committee of the House of Commons of 1826, to which the subject of banking in Scotland and Ireland was referred, that the aggregate amount of the sums deposited with the Scotch banks was then from twenty to twenty-one millions, and there is reason for believing that the sum has since been greatly increased. It appeared from the inquiries of the committee just mentioned, that about one-half of the depositors in Scotch banks are persons in the same rank and station as the depositors in savings' banks in England and Ireland.

All the chartered and private banks in Scotland have agents in London upon whom they draw bills, but their notes are not made payable except in Scotland.

There are at present (September, 1844) twenty joint-stock banks in Scotland, including the three chartered companies. The greater part of the Scotch banks have branches in connexion with the principal establishment, each branch being managed by an agent acting under the immediate directions of his employers, and giving security to them for his conduct. The Bank of Scotland has 33 branches; the British Linen Company 44 branches: the Commercial Bank 53; and the total number of branch banks established in Scotland is 313, having been 133 in 1826. Two banks have upwards of 1500 partners.

The Scotch bankers have a practice which is rigorously adhered to, of exchanging each other's notes four times a week and immediately paying the balances. For that purpose each bank has an agent in Edinburgh, by whom this arrangement is conducted. The balances are paid by bills at ten days' date on London. The state of these balances is looked at with great attention: if anything at all wrong in the conduct of a bank were thereby indicated, the others would instantly interfere and force the party to alter its proceedings. This course has proved efficient in guarding against any over-issue of bank notes, and in preventing the consequent depreciation of their value. The plan of periodically exchanging notes with each other is partially acted upon in some districts in England. The projectors of the Dunedin propose to reduce the exchange with London from twenty days to eleven.

It is the intention of the Government at an early period to deal with the question of banking in Scotland and Ireland, and it is even said that an attempt will be made to assimilate the currency to that of England.

In August, 1844, the bank circulation of the United Kingdom was as follows:—

	£	£
ENGLAND.		
Bank of England	21,448,000	
Private Banks	4,624,179	
Joint-Stock Banks	3,340,326	
		29,412,505
SCOTLAND.		
Chartered, Private, and Joint-Stock Banks . . .		2,903,322
IRELAND.		
Bank of Ireland	3,440,700	
Private and Joint-Stock Banks	1,974,284	
		5,414,984
Total		37,730,811

* Gaelic name for Edinburgh.

VI. *System of Banking in the United States of America.*—The banking business is followed in the United States of America to a very great extent; and, as regards some of its principles, upon a system which requires notice. The first bank in the United States was that of North America, established by the old Congress in 1781, and afterwards continued by the State of Pennsylvania. In 1791 a Bank of the United States was incorporated by Congress, with a capital of ten million dollars, in shares of 400 dollars, of which one-fourth was required to be paid in gold and silver, and three-fourths in public stock. The principal office of the corporation was in Philadelphia, and branches were established in other places. When this bank was first established, the whole number of banks in the Union was only twelve, whose authorized capital was nearly nineteen million dollars. In 1811, when the first charter expired, the number of banks had increased to fifty-nine, whose capital rather exceeded 52½ million dollars. The charter was not renewed; but almost all the banks in the Union having failed in 1814, a second Bank of the United States was chartered in 1816 for twenty years. Its capital was thirty-five millions of dollars, in shares of 100 dollars each. The capital was subscribed in specie and stock, in the same proportion as in the first bank, and the stock the bank might sell at the rate of two million dollars a year. One-fifth of the shares was subscribed by the government. The management was confided to twenty-five directors, who were stockholders; five of the number were annually nominated by the President of the United States, and the rest were elected by the stockholders. The question of re-chartering this bank was violently opposed, and in 1833 General Jackson, then President, removed the government deposits from the bank. In 1836 a further blow was aimed at its credit by a Treasury circular directing that the deposits of money on account of the public land sales should be paid in specie. The charter expiring in 1836, the bank was then dissolved, after ineffectual attempts of both Houses of two successive Congresses to counteract the opposition of the President and to renew its charter. The bank is now merely a bank of the State of Pennsylvania. The number of banks in the States at different periods during the last half-century is shown in the following table:—

	No. of Banks.	Capital authorised. Dollars.
1792	12	18,935,000
1801	33	33,550,000
1811	89	52,610,101
1820	368	137,210,611
1830	330	145,191,668
1838	679	317,636,778

The number of banks and branches in January, 1840, was 800, having been 840 on the 1st of January, 1839; and the whole bank capital in 1840 was 323,000,000 dollars. In 1837 and 1839 there was a general suspension of specie payments by the banks throughout the Union. The suspension in 1839 was commenced on the 9th of October by the United States Bank of Pennsylvania. The total number of banks then in the Union was 959, or, deducting 109 branches, 850. Of this latter number 343 entirely suspended; 62 suspended in part; 56 failed or were discontinued; 498 did not suspend; and 48 of those which had suspended resumed specie payments by January, 1840.

It may well be imagined that so great and rapid an extension of the banking business could not have arisen altogether from the wants of the community, but must have been based upon a spirit of speculation adverse to its interests. It is therefore not surprising that shortly after the war broke out between the United States and this country in 1812, a great portion of the banks, including all south and west of New England, were obliged to suspend their specie payments. For adopting this measure the American bankers could not adduce the same reason as that which led to the Restriction Act in England in 1797; they must have been placed in so unfavourable a position solely through the ruinous competition which had led each of them to force as large an amount of its notes upon the public as possible. By this means the precious metals were in a manner forced out of the country; and when the war broke out, and confidence began to be shaken,

the bankers were wholly unprepared for the change.

The dissolution of the United States Bank in 1811 had favoured this short-sighted policy of private bankers, by widening the sphere of their business, without adding in any way to their means of conducting it. On the contrary, a very large proportion of the stock of the United States Bank, having been held by foreigners, was remitted abroad, and this being a remittance suddenly called for out of the ordinary course of commerce, was in great part effected by the exportation of the precious metals. The suppression of the United States Bank had been attended by the further consequence of calling new banking establishments into action in order to fill the chasm. In the four years from January 1, 1811, to January 1, 1815, no fewer than 120 new banks were chartered, with nominal capitals amounting in the aggregate to forty millions of dollars.

During the general suspension of specie payments in the United States, in 1812, the paper currency was increased about fifty per cent., and its value was depreciated on the average about twenty per cent. as compared with bullion.

It was not until after the organization of the New Bank of the United States, in January, 1817, that delegates from the banks in the principal commercial states having met at Philadelphia to consider of the circumstances in which their establishments were placed, determined upon simultaneously resuming payments in specie, a measure greatly assisted by the importation of a large amount of bullion by the newly-established public bank.

This course was followed by such a contraction of their issues on the part of private bankers as occasioned great and wide-spread commercial distress. Debts contracted in the depreciated currency became suddenly payable at its par value, while the facilities usually obtained from the bankers for their liquidation were as suddenly stopped by a refusal of discounts. It is at such moments as these, when the returning good sense of a people leads them to restore the soundness of their currency, that the full evils of a departure from true principles are felt. Up to a certain point the depreciation of the currency may be, and frequently is, accompanied by a delusive show of prosperity, but which is sure in the end to have all its fallacy revealed. Mr. Gallatin states that the number of banks that failed between 1811 and 1830, in different parts of the Union, was 165, which had possessed capitals to the amount in the aggregate of near thirty millions of dollars. In some of these cases the loss fell for the greatest part upon the holders of bank-notes and on depositors; the stockholders had "paid for their shares in their own promissory notes, which remaining in the hands of the bank they afterwards redeemed by delivering up to be cancelled the stock in their names, and thus suffered no loss."

With one solitary exception—that of the bank of the late Mr. Girard in Philadelphia—all the private banks established in the United States are joint-stock companies incorporated by law, with fixed capitals, to the extent of which only the stockholders are in most cases responsible. The business of all consists in receiving deposits, discounting mercantile bills, lending money on security, and issuing notes.

The legislatures of several of the states have endeavoured to provide for the prudent management of the banks by limiting the amount of their issues in proportion to their capitals, requiring that not less than a certain proportion (generally 50 per cent.) of their nominal capitals shall be actually paid up in gold or silver, and existing in their vaults, before they begin business, and by rendering the directors of each bank personally responsible for the consequences of breaking these and other rules formed for the protection of the public. But Professor Tucker, writing in 1839, says that the preliminary condition was evaded "by means of specie temporarily borrowed of other banks for the purpose," and that the capital of nearly all the banks is in great part nominal.

In Massachusetts the banks are restrained from issuing notes for a less sum than one dollar. The states of Pennsylvania, Maryland, and Virginia have forbidden the issue of notes of a lower de-

nomination than five dollars. All notes are payable in specie; and if such payment be refused, the bank is liable to pay the holder damages at the rate of 24 per cent. per annum for the time payment is refused or delayed. The banking system of Massachusetts has been much extolled, and in particular the banks of the town of Boston have been held up as models for imitation.

In New York, Maryland, and some other of the states, the charter of a bank is forfeited from the moment that it refuses to pay its notes or deposits in specie.

The excessive number of banks in the New England States (in 1838 there were 321 out of 821 in the whole Union), and the consequent excessive competition, leads to acts and devices for the purpose of engrossing a larger share of the circulation, which is injurious to the public and places the banks in great danger.

Of the banks in the State of Rhode Island, which were 60 in number in 1838, Professor Tucker remarks:—"Many have perhaps but one salaried officer, a cashier, whose annual stipend ranges from 300 to 600 dollars: indeed many of its bankers can be regarded as little more than cashiers and book-keepers for particular manufactories."

There are twenty incorporated banks in the city of New York, some of which paid a bonus to the state for their acts of incorporation. Their capitals amount to twelve millions of dollars. All the banks existing in New York issue notes for one dollar and upwards. All the banks discount mercantile bills. No interest is allowed on deposits; and in fact, the activity of the trade of the city is so great in comparison with the capitals of the merchants, that deposits for such a length of time as would justify the payment of interest are unknown.

An Act was passed by the legislature of the state of New York, in April, 1829, called the 'Safety Fund Act,' to the provisions of which "all monied corporations thereafter to be created or renewed are subjected." Under one of its provisions, every such corporation is obliged, on the 1st of January in each year, to pay to the treasurer of the state one-half or one per cent., at the option of the managers, on the amount of the capital stock of the bank, and to continue such payment until three per cent. in the whole shall be paid: this fund to remain perpetual in the hands of the treasurer, and to be solely appropriated to the payment of the debts of such banking corporations as may become insolvent. In the meanwhile the proportion of interest arising from its payments is carried to the credit of each bank, after providing for the payment of salaries to certain commissioners who are appointed to investigate at least four times in every year the affairs of each banking corporation in the state. These commissioners are invested with extensive powers to examine the officers of the banks upon oath, to inspect the books, &c. They are empowered to visit the banks subject to the act, and to arrest the business of any bank discovered to be insolvent, by application to the court of chancery. The investigations of the commissioners into the state of any bank can be made oftener than once a quarter on the joint application of any three banks. Commissioners for inspecting the condition of the banks have been appointed by the legislatures of Vermont, Maine, New Hampshire, Connecticut, and Rhode Island. But they have not adopted the Safety Fund scheme, which has practically afforded no security against suspension; and in 1837 the general suspension of specie payments began in the state of New York, the only state in which the system then prevailed. Comparing ninety Safety Fund banks in the state of New York, with the banks of Pennsylvania, it was found in 1837, that the proportion of specie in circulation was 25 per cent. for the New York banks, and 22 per cent. for the Pennsylvania banks, but in their banking operations the Pennsylvania banks had been decidedly most prudent. Eight New York banks, not subjected to the Safety Fund law, had specie in proportion to their circulation, to the amount of 45 per cent.

In all cases where, from the date of their incorporation, and the determination of the directors of any bank not to bring themselves under the provisions of this act, they do not contribute to the Safety

Fund, those directors are held personally liable to the full extent of all losses which the shareholders or creditors of the bank under their charge may sustain by reason of their departure from the course of management prescribed by their act of incorporation.

In providing for the payment of notes in specie, the legislatures have not insisted that the coin of the United States shall alone be used; and it has been the practice to adopt a schedule of prices at which the coins of different countries shall be considered good tender of payment.

In July, 1838, a law was passed which gives to partners in banking associations a limited responsibility, on condition of their depositing securities, to the amount of the notes issued.

BANKRUPT (*banque-routier*, a bankrupt, and *banque-route*, bankruptcy—from *bancus*, the table or counter of a tradesman, and *ruptus*, broken) is a merchant or trader whose property and effects, on his becoming insolvent, are distributed among his creditors, under that system of statutory regulations called the Bankrupt Laws. These laws, which originated in England with the statute 34 & 35 Henry VIII. c. 4, were first mainly directed against the frauds of traders, who acquired the merchandise and goods of others, and then fled to foreign countries, or lived in extravagance, and eluded and defrauded their creditors. The bankrupt was consequently treated as a criminal offender; and until within a few years, the not duly surrendering his property under a commission of bankruptcy, when summoned, was a capital felony. The bankrupt laws are now, and have for some time past, been regarded as a system of legislation, having the double object of enforcing a complete discovery and equitable distribution of the property and effects of an insolvent trader, and of conferring on the trader the reciprocal advantage of security of person and a discharge from all future claims of his creditors. These laws were till lately spread over a voluminous accumulation of statutes, referring to and depending on each other, and often creating confusion and inconvenience from their diffuse and contradictory provisions. These statutes were, under the auspices of Lord Eldon, repealed, and their provisions altered and consolidated into the present general Bankrupt Act—6 Geo. IV. c. 16—which introduced many important alterations and simplifications.

The 1 & 2 William IV. c. 56, constituting "the Court of Bankruptcy," materially altered the mode of administration of this law; it entirely removed the jurisdiction in the first instance in cases of bankruptcy from the Court of Chancery to the new Court of Bankruptcy, reserving only an appeal from the Judges of that court to the Lord Chancellor, as to matters of law and equity and questions of evidence. Instead of the commission under the Great Seal, which formerly issued to a certain number of barristers-at-law who were permanent "Commissioners of Bankrupt," the above Act substituted a *fiat* of bankruptcy; and other important alterations were also introduced.

The 5 & 6 Vict. c. 122, which came into operation on the 11th of November, 1842, also effected several important alterations, and, as its title implies, it was "An Act for the Amendment of the Law of Bankruptcy," and it repealed all acts which were inconsistent with its provisions.

The provisions of the Bankrupt Act of 6 Geo. IV., as amended by the act of 5 & 6 Vict. c. 122, and the more recent act of 7 & 8 Vict. c. 96, are very numerous. The complete exposition of these provisions, with all the decisions thereon, and the explanation of the forms of procedure, belong to works that treat specially of legal matters. But viewed as a mode of settling the claims of creditors against their debtors, the bankrupt law of England is an important subject in our public economy.

The first peculiarity in the bankrupt law is, that only those persons can have the benefit of it who are particularly described in the act 6 Geo. IV. c. 16, and the act of 5 & 6 Vict. c. 122. This act of Geo. IV. enacts, that "all bankers, brokers, and persons using the trade or profession of a scrivener, receiving other men's moneys or estate into their trust or custody; and persons insuring ships, or their

freight, or other matters, against perils of the sea; warehousemen, wharfingers, packers, builders, carpenters, shipwrights, victuallers, keepers of inns, taverns, hotels, or coffee-houses, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, and all persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise in gross or by retail; and all persons who, either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying or letting for hire, or by the workmanship of goods or commodities, shall be deemed traders liable to become bankrupts; provided that no farmer, grazier, common labourer or workman for hire, receiver-general of the taxes, or member of or subscriber to any incorporated commercial or trading companies, established by charter or act of parliament, shall be deemed, as such, a trader liable, by virtue of that act, to become bankrupt."

The above enumeration has given rise to a variety of decisions in the courts of law as to who is a trader; and these decisions have established that many persons cannot have the benefit of the act who get their living by what is commonly considered to be a trade. The 5 & 6 Vict. c. 122, § 10, has added to the list of persons who may be made bankrupts "Livery-stable keepers, coach proprietors, carriers, ship-owners, auctioneers, apothecaries, market-gardeners, cowkeepers, brickmakers, alum-makers, lime-burners, and millers." Other persons, who might with as good reason claim the benefit of being made bankrupts, must be satisfied with the relief that they can obtain as insolvent debtors. [INSOLVENT.]

In order that a man shall become liable to be made a bankrupt, he must commit, as it is termed, an act of bankruptcy.

These acts are of two sorts: first, those which are only acts of bankruptcy when done with intent to defeat or delay his creditors; secondly, certain acts which have that effect without reference to any intention. The first class are enumerated in § 3 of 6 Geo. IV. c. 16, which enacts, "that if any such trader shall depart this realm, or being out of this realm shall remain abroad, or depart from his dwelling-house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested, or his goods, money, or chattels to be attached or sequestrated, or taken in execution, or make any fraudulent grant or conveyance of any of his lands, tenements, goods, or chattels, or make any fraudulent surrender of any of his copyhold lands or tenements, or make any fraudulent gift, delivery, or transfer of any of his goods or chattels; every such trader doing, suffering, procuring, executing, permitting, making or causing to be made, any of the acts, deeds, or matters aforesaid, with intent to defeat or delay his creditors, shall be deemed thereby to have committed an act of bankruptcy."

The acts here enumerated have reference to a trader's intention to defeat and delay his creditors; and if such intention is legally established, he may, by virtue of such acts, be made a bankrupt. The word *realm* means the jurisdiction of the courts of England, and therefore departing to Ireland or Scotland, or a British colony, which are out of such jurisdiction, may constitute an act of bankruptcy.

As to a trader being arrested for a debt, this is only an act of bankruptcy in itself when he can pay the debt, but prefers going to prison with a view to defeat his general creditors. A compulsory going to prison under an arrest is only an act of bankruptcy when the imprisonment endures twenty-one days, as mentioned hereafter. It is also an act of bankruptcy if a man keep out of the way with intent to defeat and delay his creditors, in consequence of which he is outlawed for want of due appearance to legal process.

An assignment by deed of all a trader's effects to trustees for the benefit of all his creditors is legally an act of bankruptcy. But if all the creditors (as often happens) assent to and sign such an instrument, it becomes valid, for they have all agreed not to consider it an act of bankruptcy. And by § 4 of 6 Geo. IV. c. 16, such an assignment shall not be deemed an act of bankruptcy unless a fiat issue against the trader within six calendar months from the execution of such arrangement by such trader; provided the assignment be

executed by every trustee within fifteen days from the date of the execution by the trader, and the execution is attested and publicly notified in the manner pointed out by the statute.

Generally when a trader makes over or parts with any portion of his property, it depends on the circumstances in which he then is, and to the intention, as shown by those circumstances and the nature of the transfer, whether it shall be considered an act of bankruptcy or not. Voluntary transfers of his property, particularly if he is in embarrassed circumstances, are presumptive evidence of an intention to defeat and delay his creditors or some of them, and are therefore acts of bankruptcy.

The acts of bankruptcy above enumerated depend upon the trader's intention in doing the act. The following are the acts which constitute acts of bankruptcy, whether done with or without an intention to defeat or delay creditors.

By § 5 of 6 Geo. IV. c 16, "if any trader, having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall upon such or any other arrest or commitment for debt, or non-payment of money, or upon any detention for debt, lie in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him and not discharged, every such trader shall be thereby deemed to have committed an act of bankruptcy: or if any such trader having been arrested, committed, or detained for debt, shall escape, every such trader shall be deemed thereby to have committed an act of bankruptcy from the time of such arrest, commitment, or detention."

The bankrupt law does not make the mere circumstance of being arrested an act of bankruptcy, except when a trader suffers himself to be arrested for a debt not due, or a debt which he is able to pay, as above stated. The presumption of insolvency only arises from the fact of lying in prison twenty-one days without being able to procure bail, or of escaping out of prison to avoid payment of the debt.

Under the old law, no effectual provision was made for enabling an honest debtor who believed himself insolvent, voluntarily to subject himself to the bankrupt law, and thereby to produce an equal distribution of his property among his creditors. To remedy this defect, it was provided by 6 Geo. IV. c. 16, § 6, and continued by 5 & 6 Vict. c. 122, § 22, that if a trader file with the secretary of bankrupts a declaration of his insolvency, signed by himself, and attested by an attorney, the secretary of bankrupts shall sign a memorandum which shall authorize the insertion in the *Gazette* of such declaration, and such declaration shall then become an act of bankruptcy; but the *fiat* upon it must issue within two months after filing the declaration.

In addition to the above acts of bankruptcy, the circumstance of a debtor filing a petition for his discharge under the Insolvent Debtors' Act is by the statute 7 Geo. IV. c. 57, declared an act of bankruptcy, on which a *fiat* may be issued. And by 7 & 8 Vict. c. 96, § 41, the Lord Chancellor may issue a *fiat* against a trader upon his petition made to the Lord Chancellor, when such trader has filed a declaration of insolvency in the manner and form prescribed by the statute in that case made and provided relating to bankrupts.

The 5 & 6 Vict. c. 122, § 11, enacts, that when the creditor of any trader has made an affidavit of his debt in the proper court, and of his having delivered a written account of such debt and demanded payment thereof from his debtor, the court may summon the debtor and require him to say whether he admits the demand or not, but he is also allowed to make a deposition upon oath in writing that he believes he has a good defence to such demand, or to some part thereof, which he must specify. If the trader does not appear on such summons, or shall appear and refuse to admit the demand, and not make such deposition as above mentioned, in such case if he does not pay or compound the debt within the time named by the act (fourteen days), or give security for its payment, he shall be considered to have committed an act of bankruptcy. If the trader admits the

debt, he must pay or compound or secure it within the time fixed by the act (§ 14); otherwise he will be adjudged to have committed an act of bankruptcy.

As traders who are members of parliament are not liable to personal arrest for debt during the time of privilege, some special provisions were requisite as to acts of bankruptcy committed by such persons. Accordingly, § 9 of the bankrupt act, 6 Geo. IV. c. 16, provides that if any trader having privilege of parliament commit any of the before-mentioned acts of bankruptcy, a commission (*fiat*) of bankruptcy may issue against him, and the commissioners and all other persons acting under the *fiat*, may proceed as against other bankrupts; but such trader shall not be subject to be arrested during the time of privilege, except in cases made felony by the bankrupt law. By the 52 Geo. III. c. 144, whenever a member shall be found and declared a bankrupt, he shall be for twelve months incapable of sitting and voting. At the expiration of twelve months the bankruptcy must be certified to the Speaker, and the election of the member is void, unless the fiat be superseded or the creditors paid in full. There is no legal obstacle to a bankrupt retaining his seat in the interval, unless the fact of the bankruptcy be brought before the notice of the House by petition. (May, *On the Usage, &c. of Parliament.*)

And by § 11 it is enacted, that if any decree or order of a Court of Equity or Bankruptcy shall have been pronounced, ordering any such trader, having privilege of Parliament, to pay money, and such trader shall disobey the same, the person entitled to receive it may apply to the court to fix a peremptory day for the payment; and if such trader shall then neglect to pay the same, he shall be deemed to have committed an act of bankruptcy; and any of his creditors may sue out a *fiat*, and proceed as against other bankrupts.

The above are the various and the only acts which, before the passing of 5 & 6 Vict. c. 122, rendered a trader liable to a *fiat* of bankruptcy; but by this statute an act of bankruptcy is also committed when a trader neglects paying, securing, or compounding a judgment debt, upon which the plaintiff might sue out execution (§ 20); also if a trader disobeys an order of any court of equity, or order in bankruptcy or lunacy, for payment of money on a peremptory day fixed (§ 21). No other acts, however strongly they may indicate insolvency or fraudulent intention in the trader, are sufficient to render him a bankrupt. The act of bankruptcy may be committed after a trader has ceased trading; for so long as his trading debts remain unpaid, he is amenable to the law of bankruptcy. The debt, however, on which the *fiat* is grounded must of course be one which was contracted during the period of his trading.

The liability to be made a bankrupt appears from what has been stated to be capable either of being a benefit or an injury to the bankrupt. If he is insolvent, it is for his benefit that his creditors should have his property equally distributed among them, and it is for his own benefit that he should be released from all further claims. It may be an injury, if he has a profitable business, the value of which depends on its not being disturbed; for by committing an act of bankruptcy, and being under a temporary disability to meet his engagements, he is liable to have all his property sold for the purpose of being distributed among his creditors. Such forced sales often realise very little, and never produce the full value of a property. By such a sale what is called a business is totally destroyed. An act of bankruptcy may, therefore, ruin a man who would be able to satisfy all his creditors if his property were not sold. The injury which a man may sustain by being made a bankrupt, or even having proceedings commenced against him under the bankrupt act, is admitted by the provisions which will be presently mentioned, as to the bond that the petitioning creditor is required to give to the Lord Chancellor.

The *fiat* of bankruptcy issues on a petition of one or more creditors to the Lord Chancellor. Under 6 Geo. IV. c. 16, the debt of the petitioning creditor, if there was only one who petitioned, was required to be 100*l.*; if two, 150*l.*; if

three or more, 200*l.* By 5 & 6 Vict. c. 122, the petitioning creditor's debt must be 50*l.* or upwards; if two creditors petition, their joint debts must be 70*l.*; or if three, 100*l.*

The first step of the petitioning creditor is to ascertain, by a search at the Bankrupt Office, that no proceedings have been previously taken for issuing a *fiat* against the trader. He then takes oath, before a Master in Chancery, as to the amount of his debt, and his belief that the trader has committed an act of bankruptcy, and then executes a bond to the Lord Chancellor in the sum of 200*l.*, binding himself to prove his debt, either before the commissioners or on any trial at law, should the *fiat* be contested; and also to prove that the trader has committed an act of bankruptcy, and to proceed on the *fiat*. But by the act 5 & 6 Vict. c. 122, § 3, the Lord Chancellor may dispense with this bond, if he thinks fit. When the affidavit and bond are delivered at the Bankrupt Office, an entry is made in an official book, called the "Docket Book," and the petitioning creditor is then said to have "struck a docket" against the trader. A trader against whom a *fiat* has issued may be arrested on proof to the court that there is probable cause for believing that he is about to quit England, or to conceal his goods with intent to defraud his creditors (5 & 6 Vict. c. 122, § 5); but any person so arrested may apply for his discharge forthwith (§ 6).

If the petitioning creditor fails in proving the matters which he undertakes to prove by his bond, and if it appears that the *fiat* was taken out fraudulently or maliciously, the Lord Chancellor may, on the petition of the trader, examine the matter, and order satisfaction to be made to the trader; and for that purpose may assign the bond to the trader, who may sue the petitioning creditor thereon in his own name. The assignment of the bond is in such case conclusive evidence of malice against the petitioning creditor; and the injured trader may also, if he please, bring a special action for maliciously suing out the *fiat*, in which he may recover more considerable damages than the mere penalty which could alone be recovered in an action on the bond. An act of bankruptcy concerted between the bankrupt and one of his creditors does not render the *fiat* invalid (5 & 6 Vict. c. 122, § 8).

Before the 1 & 2 Will. IV. c. 56, § 12, which abolished commissions, and substituted *fiats* of bankruptcy, the Lord Chancellor used, by a commission under the Great Seal, to appoint such persons as to him seemed fit, who, by virtue of the bankrupt acts and of the commission, had authority to dispose of the person and property of the bankrupt for the advantage of his creditors. The act 1 & 2 Will. IV. c. 56, constituting the Bankruptcy Court, substituted a simple *fiat* for the commission under the Great Seal.

The *fiat* is directed either to a Commissioner of the Court of Bankruptcy, or secondly, to the commissioners of the district courts of bankruptcy, constituted under 5 & 6 Vict. c. 122. The functions and powers of the different component parts of the Bankrupt Court are prescribed by this statute.

Upon proof being made, either before the Court of Bankruptcy or the district court, of the petitioning creditor's debt, the trading of the bankrupt within the meaning of the section before stated, and of an act of bankruptcy of the nature before described, the court formally adjudges the trader to be a bankrupt. The trader adjudged a bankrupt is to have notice thereof before the adjudication is advertised, and is to be allowed five days to show cause against the adjudication; and if the petitioning creditor's debt, the trading, or the act of bankruptcy, appear insufficient, the adjudication will be annulled (5 & 6 Vict. c. 122, § 23). Before the passing of 6 Geo. IV., the trader could at any time dispute the validity of the commission by bringing an action against the assignees; but by that statute the power of doing so was confined to a period within two months after the adjudication; and under 5 & 6 Vict. c. 122, § 24, the bankrupt cannot dispute the *fiat* or prosecute after twenty-one days from the appearance of the notice of bankruptcy in the 'London Gazette.' If he were not within the United Kingdom, but in some other part of Europe at the date of the adjudication, the period is extended to

three months; and to twelve months if he were out of Europe. An appeal lies from this court to the Lord Chancellor on any matter of law or equity, or the refusal or admission of evidence only. The Lord Chancellor has power, under special circumstances, after any such issue tried, to order another *fiat* to issue at the instance of another creditor, and to be supported by evidence of any other debt, trading, and act of bankruptcy. If the bankrupt die subsequent to the adjudication of bankruptcy, the commissioners are authorized to proceed as if he were living.

If no cause can be shown for annulling the adjudication, the court is required forthwith to give notice of the adjudication in the 'London Gazette,' and thereby to appoint two public meetings for the bankrupt to surrender his property and effects, and to conform to the provisions of the bankrupt act. The last of these meetings is to be not less than thirty and not more than sixty days after the publication in the 'Gazette;' and at the first meeting the choice of the bankrupt's assignees is to take place. The commissioners also sign a summons to the bankrupt to surrender, disobedience to which is punishable by transportation for life, or by imprisonment, with or without hard labour, for any term not exceeding seven years. The bankrupt's examination may be adjourned from time to time during a period not exceeding three months (5 & 6 Vict. c. 122, § 23).

After such surrender the court is authorized to make such allowance to the bankrupt out of his estate, till he has passed his last examination, as shall be necessary for the support of himself and his family. The bankrupt, after the choice of assignees, is bound to declare upon oath all books and papers relating to his estate, to attend the assignees on reasonable notice, and assist them in making out his accounts. If he refuses to make discovery of his estate and effects, or does not deliver up his property, with all books, papers, &c. relating thereto, he is liable to the same punishment as for not surrendering on the summons of the court; and if he is guilty of destroying or falsifying any of his books, or making false entries, he may be imprisoned for any term not exceeding seven years. After his surrender he may at all times inspect his books and papers, and bring with him two persons to assist him. After he has obtained his certificate, he shall, on demand in writing, attend the assignees to settle any accounts between his estate and any debtor or creditor, or do any act necessary for getting in his estate, being paid 5*s.* a day by the assignees. The bankrupt is protected from arrest in coming to surrender, and also during the sixty days, or any enlarged time (not exceeding three months, 5 & 6 Vict. c. 122, § 23), allowed for finishing his examination.

The commissioners sign a warrant of seizure of the bankrupt's effects, which is directed to a person called the *messenger*, who is authorized to break open the house, warehouse, doors, trunks, and chests of the bankrupt, and seize his body and property; and in case there is reason to suspect that property of the bankrupt is concealed in any premises not his own, a justice of the peace is authorized to grant a search-warrant to the messenger, who is protected in the execution of it, in the same manner as in cases of stolen property concealed. A bankrupt who conceals goods, &c. to the value of 10*l.* is guilty of felony, and liable to transportation for life, or imprisonment, with or without hard labour, for any term not exceeding seven years. The messenger is protected from vexatious actions for acts done in the discharge of his duty by the clauses which are usual for the protection of constables and other similar officers in the exercise of their functions; and any obstruction offered to the messenger is a contempt of the Court of Chancery. For expenses incurred in the execution of his office before the choice of assignees, his claim is against the petitioning creditor, and for those subsequently incurred, against the assignees.

One of the most important parts of the proceedings in bankruptcy is the proof of debts. Every person to whom the bankrupt is fairly indebted is entitled to establish his debt, and to receive a portion of the bankrupt's estate. All debts legally due from the bankrupt at the time of the

act of bankruptcy are proveable, and also all debts contracted before the issuing of the *fiat*, though subsequent to the act of bankruptcy; provided the creditor, at the time of the debt being contracted, had no knowledge of the act of bankruptcy. There are also provisions in favour of those to whom a debt may become due after the issuing of the *fiat*, upon some contingency provided for by agreement before the trader was made a bankrupt, such as policies of insurance for instance. And all creditors having claims upon the bankrupt which depend on any contingency may, on application to the commissioners, have a value set upon the contingent claim, and be admitted to prove for the debt thus ascertained. A bankrupt who within three months of his bankruptcy obtains goods on credit under false pretences, or removes or conceals goods so obtained, is guilty of a misdemeanour, and on conviction is liable to imprisonment, with or without hard labour, for a term not exceeding two years. With respect to interest on debts, the general rule is, that no interest is provable unless interest was reserved by contract, either express, or arising by implication from the usage of trade, or other circumstances attending the contracting of the debt: where interest is allowed, it is calculated to the date of the *fiat*. By a special provision, bills of exchange and promissory notes are expressly excepted from the general rule, and the holders of those instruments are entitled to prove for interest down to the date of the *fiat*, though interest be not reserved by the instrument. With respect to proof of debts against the partners of a firm, the general rules are —1. that as a creditor of the whole firm may, if he please, sue out a separate *fiat* against any single partner or any number of partners, he may prove his debt in the same manner; 2. a joint creditor of the whole firm may prove against the separate estate of any one partner who is bankrupt, provided there is no partner who is solvent; but if there is a partner who is solvent, then the joint creditors cannot come into competition with the separate creditors of the partner who is bankrupt; 3. where there are no separate debts, the joint creditors may of course prove against the estate of the partner who is bankrupt. But for the mere purposes of assenting to or dissenting from the certificate of the bankrupt and of voting for assignees, joint creditors may prove under a separate *fiat*, and separate creditors under a joint *fiat*, without regard to the above rules. If the whole firm become bankrupt, being indebted to an individual partner, such partner cannot prove against the joint estate in competition with the joint creditors; for as they are his own creditors also, he has no right to withdraw any part of the funds available for the payment of their debts; nor can those partners of a firm who remain solvent prove against the separate estate of a member of that firm in competition with his separate creditors, unless the joint creditors be first paid 20s. in the pound and interest.

The investigation of a bankrupt's debts is often a matter of great difficulty, owing to the complicated nature of many mercantile transactions, fraud on the part of the bankrupt, or collusion between him and creditors. Occasionally also many difficult questions arise out of the contending claims of the various creditors of the bankrupt.

Not only is all the property to which the bankrupt himself has a right applicable towards the payment of his creditors, but there are instances in which effects of other parties in his custody, which could not have been retained by the bankrupt had he not become bankrupt, will vest in his assignees under the *fiat*. The principal enactment on this subject, 6 Geo. IV. c. 16, § 72, was intended to apply to cases where persons allowed the use of their property to a failing trader, who is thereby enabled to assume a deceitful appearance of wealth, and obtain credit with the world. Accordingly, if any bankrupt, by the permission and consent of the owner, shall have in his possession, order, or disposition any goods or chattels whereof he was reputed owner, or whereof he had taken on himself the sale or disposition as owner at the time of his bankruptcy, the Court may order the same to be sold for the benefit of the creditors. The provision applies only to

goods and chattels, such as ships, furniture, utensils in trade, stock, bills of exchange, &c. But interests in property of a real nature are not affected by it. The main difficulty, which has occasioned much litigation as to the cases within this clause, is in deciding whether the bankrupt was or was not the reputed owner of the property at the time of his bankruptcy, which is a question of fact determinable by a jury, according to the circumstances of each particular case. [AGENT.]

There are certain classes of creditors which the legislature has peculiarly privileged. The Court is authorized to order that the clerks and servants of the bankrupt (which includes travellers and servants working by the piece) shall receive their wages and salary, for not exceeding three months, and not exceeding 30*l.* out of the estate of the bankrupt; and they are at liberty to prove for the excess. The Court may also order wages, not exceeding forty shillings in amount, to be paid to any labourer or workman to whom the bankrupt is indebted, and they may also prove for the remainder. Under 6 Geo. IV. six months' wages could be paid.

In order to provide for the due distribution of the bankrupt's property among those who have proved his debts, the bankrupt's estate is vested in assignees, who are charged with the collection and distribution of it. They are either, first, *chosen assignees*, or, secondly, *official assignees*, who are permanent officers of the Court of Bankruptcy.

The *chosen assignees* are chosen by the major part, in value, of the creditors who have proved debts to the amount of 10*l.*, subject to a power of rejection on the part of the Court if they are deemed unfit for the office. The first duty of the assignees is to ascertain the validity of the bankruptcy, for which purpose the petitioning creditor is bound to furnish them with all the information in his power. If they ascertain it to be defective, they may apply to the Lord Chancellor to supersede it, which is the only mode in which they can dispute the validity of the *fiat*. The assignees are required to keep an account of all receipts and payments on account of the bankrupt, which every creditor may inspect. The Court may at all times summon the assignees, and require them to produce all books, papers, and documents relating to the bankruptcy; and, on their default without excuse, may cause the assignees to be brought before them, and on their refusing to produce such books, &c., may commit them to prison until they submit to the order of the Court. If an assignee himself become bankrupt, being indebted to the estate of which he is assignee, and if he obtain his certificate, the certificate will only have the effect of freeing his person from imprisonment; but his future property and effects remain liable for his debts as assignee. The Court of Chancery has a general jurisdiction over assignees in matters relating to the bankruptcy, and will compel the performance of their duties if neglected. One of their duties is to sell the bankrupt's property, at which sale they cannot themselves in general become purchasers by reason of their fiduciary character. The assignees are entitled to be reimbursed all necessary expenses; and if an accountant is indispensable to assist them, they are entitled to employ one. They have the right of nominating the solicitor to the bankruptcy, and of regulating his continuance or removal; and they may, with the approbation of the commissioners, appoint the bankrupt himself to manage the estate, or carry on the trade on behalf of the creditors, or to aid them in any other matter. The Court of Review has power to remove an assignee, either on his own application or on that of a creditor.

The *official assignees* are merchants, brokers, or accountants, or persons who are or have been engaged in trade, not exceeding thirty in number, who are appointed by the Lord Chancellor to act as official assignees in all bankruptcies. One of them acts with the chosen assignees in every such bankruptcy, giving security for his conduct. The personal estate of the bankrupt, and the rents and proceeds of his real estate, are received by the official assignee, where not otherwise directed by the Court of Bankruptcy or the commissioners; and all stock, moneys, and securities of the bankrupt must be forthwith transferred and paid by the official assignee into the Bank of England, to the

credit of the Accountant in Bankruptcy, subject to such order for keeping an account, or payment, investment, or delivery thereof, as the Lord Chancellor or the Court of Bankruptcy shall direct. Till the choice of the chosen assignees, the official assignee acts as sole assignee of the bankrupt. He is not to interfere with the chosen assignees as to the appointment or removal of the solicitor, or as to directing the sale of the bankrupt's estate. The Lord Chancellor may supply any vacancy in the before-mentioned number of official assignees; and the Court before whom any trader is adjudged bankrupt may order a suitable remuneration to the official assignee out of the bankrupt's estate.

Before the passing of 1 & 2 Wm. IV. c. 56, the commissioners of bankruptcy executed a deed of assignment to the assignees of all the bankrupt's property; but now the whole of the bankrupt's real and personal estate and effects, whether in Great Britain, Ireland, or the colonies, becomes absolutely vested in the assignees by virtue of their appointment; and in case of any new assignee being appointed, it vests in him jointly with those before appointed.

The copyhold estate of the bankrupt does not pass to the assignees by virtue of their mere appointment, but the commissioners are authorized to convey such property to any person who purchases it. The purchaser is to agree and compound with the lord of the manor wherein it is situate for the fines and services, and the lord shall at the next court grant the property to the vendee. Property which the bankrupt holds as trustee for others does not pass to his assignees. Whatever beneficial interest the bankrupt may have in property of his wife passes to his assignees; but property which she enjoys as a *sole trader* in the city of London, or which is settled to her separate use, does not fall within the operation of the bankruptcy.

The general rule is, that all the property of a bankrupt vests in his assignees for the benefit of the creditors from the time of the act of bankruptcy; from which it follows that all dispositions made by the bankrupt of his property between that time and the issuing of the *fiat* are void. This rule of law occasioned much hardship in many instances to persons who had dealt with the bankrupt in ignorance of his having committed an act of bankruptcy, and it has therefore been materially qualified by various legislative provisions.

If nine-tenths in number and value of the creditors agree at two separate meetings of creditors held after the last examination to accept a composition, the fiat may be annulled. Creditors under 20*l.* are not entitled to vote, but their debts are reckoned in value. The bankrupt may be required to take oath that he has not attempted by any unfair means to obtain the assent of his creditors.

When the bankrupt has duly submitted himself to examination by the commissioners, and has surrendered up his property and effects, and in other respects conformed to the requisitions of the Bankrupt Act, he becomes qualified to receive a certificate, which operates as a discharge from all debts due by him when he became a bankrupt, and from all claims and demands made proveable under the *fiat*. The 6 Geo. IV. c. 16, required that the certificate should be signed by four-fifths in number and value of the creditors who had proved debts above 20*l.*; or after six calendar months from the last examination of the bankrupt, either by three-fifths in number and value of such creditors, or by nine-tenths in number of such creditors. But the recent statute of 5 & 6 Vict. c. 122, dispenses with the signatures of the creditors, and the court, which is authorized to act in the prosecution of any *fiat* in bankruptcy, holds a public sitting, of which due notice is given to the solicitor of the bankrupt's assignees, and in the 'London Gazette,' and at such sitting any of the creditors may be heard against the certificate being allowed, but the court will judge for itself of the validity of such objections as are made, and either find the bankrupt entitled thereto and allow the same, or refuse or suspend it, or annex such conditions to its allowance as the justice of the case may require. The certificate will not be a discharge unless the court certifies to the Court of Review in manner provided by the act, that the conduct of the bankrupt as a trader,

both before as well as after his bankruptcy, has been in conformity to the bankrupt laws. The bankrupt is required to make oath in writing that such certificate was obtained fairly and without fraud. The allowance of the certificate must be afterwards confirmed by the Court of Review, against which confirmation any of the creditors may be heard before the court.

In certain cases of misconduct by the bankrupt, the bankrupt is not entitled to his certificate; as, if he has lost in any one day 20*l.* by gambling or wagering, or 200*l.* within one year next preceding his bankruptcy; or if he has, within that period, lost 200*l.* by any contract for the sale and transfer of government or other stock, where such contract was not to be performed within one week of the contract; or if he have, after bankruptcy or in contemplation of bankruptcy, destroyed, altered, mutilated, or falsified any of his books or papers, or been privy to the making any fraudulent entries in his books; or if he has concealed any part of his property; or if he was privy to the proving of any false debt under the *fiat*, or afterwards knew the same, without disclosing it to the assignees within one month after such knowledge.

A certificate has, in some very extreme cases (as for gaming), been recalled after it has been allowed. But so harsh a measure requires to be very strongly grounded.

The effect of the certificate is to exempt the bankrupt from the payment of all debts which might have been proved under the *fiat*, and of course from arrest. A debt proveable under the *fiat*, and a debt barred by the certificate, are convertible terms. A written promise to pay a debt is not barred by the certificate; but any contract or security to induce a creditor to forbear opposition is void, and any creditor of a bankrupt who obtains money, goods, &c. to forbear opposition or to consent to the allowance or confirmation of the certificate, is liable to a penalty of treble the amount. If any bankrupt is taken in execution for a debt barred by the certificate, any judge, on his producing his certificate, may order him to be discharged without fee. The bankrupt has, after obtaining his certificate, in certain cases a claim to an allowance out of his estate. If his estate has paid 10*s.* in the pound to his creditors, he is entitled to five per cent. out of such estate, provided the allowance does not exceed 400*l.* If the estate pays 12*s.* 6*d.* in the pound, he is to be paid 7*l.* 10*s.* per cent., provided such allowance does not exceed 500*l.*; and if his estate pays 15*s.* in the pound, he is to be allowed ten per cent., provided such allowance does not exceed 600*l.* If, at the expiration of twelve months, the estate does not pay 10*s.* in the pound, he is only entitled to such allowance as the assignees think fit, not exceeding 3 per cent. and 300*l.* The above allowances are dependent on the allowance of the certificate, and cannot be claimed previously, and they cannot be paid till the requisite amount of dividend is paid. The bankrupt's right to it, however, is a vested interest even before the dividend, and passes to his representatives in the event of his death. One partner may receive an allowance if a sufficient dividend shall have been paid on his separate estate and on the joint estate, while another partner may not be entitled.

The effect of the certificate on a second bankruptcy is very materially curtailed; for if a bankrupt, after having once obtained a certificate, or having compounded with his creditors, or having been discharged under an Insolvent Act, again becomes bankrupt and obtains a certificate, unless his estate pays 15*s.* in the pound, such second certificate shall only protect his person from arrest; but his future estate and effects shall vest in the assignees under the second commission, who may seize the same.

If any surplus of the bankrupt's estate remains after the creditors are paid in full, it of course belongs to the bankrupt, and the assignees are bound, on his request, to declare to the bankrupt in what manner they have disposed of his real and personal estate, and to pay the surplus, if any, to him.

The statute 1 & 2 Wm. IV. c. 56, empowered the king, by letters patent under the Great Seal, to establish a court of judicature, to be called the Court of Bankruptcy, consisting of a 'chief judge,' being a sergeant or barrister-at-law of ten

years' standing, and three other judges, persons of the same description, and six barristers of seven years' standing, to be called commissioners of the court. The court was constituted a Court of Law and Equity, and, together with every judge and commissioner thereof, was to exercise all the rights and privileges of a Court of Record, as fully as the same are exercised by any of the courts or judges at Westminster. Before this court *fiats* in bankruptcy were to be prosecuted in London, and commissioners under the great seal were no longer to be appointed as formerly in each bankruptcy. The four judges of the court sat as a Court of Review. By 5 & 6 Wm. IV. c. 29, the number of the judges was reduced from four to three.

By 5 & 6 Vict. c. 122, several important alterations were made in the Court of Bankruptcy. The Court of Review is formed of one judge (§ 64), instead of three judges; and district courts of bankruptcy are established (§ 46). One of the Vice-Chancellors is now chief judge of the Court of Review.

The Court of Review has superintendence in all matters of bankruptcy, and jurisdiction to hear and determine all such matters of this description as were formerly brought by petition before the Lord Chancellor, and also all such other matters as are by the act, or the rules and regulations made in pursuance thereof, specially referred to this court. The proceedings before the court are by way of petition, motion, or special case, with an appeal to the Lord Chancellor in matters of law or equity; or, on the refusal or admission of evidence, such appeal to be heard by the Lord Chancellor only, and not by any other judge of the Court of Chancery. The court may direct issues as to questions of fact to be tried before any judge of the court, or before a judge of assize, and a jury to be summoned under the order of the court. The costs in the Court of Review are in the discretion of the court, and are to be taxed by one of the Masters of the Court of Chancery. All attorneys and solicitors of the courts at Westminster may be admitted and enrolled in the Court of Bankruptcy without fee, and may appear and plead before the commissioners, but not before the Court of Review, in which court suitors appear by counsel. The judge of the court, with consent of the Lord Chancellor, may make rules and orders for regulating the practice and sittings of the court, and the conduct of the officers and practitioners. The court has an official seal with which all proceedings and documents in bankruptcy requiring the seal are sealed. An appeal lies from the commissioners to the Court of Review, and the decision of the Court of Review on the merits as to the proof of the debt is final, unless an appeal is lodged to the Lord Chancellor within one month. The Lord Chancellor or the Court of Review may direct an appeal case to be brought before the House of Lords under certain circumstances. The judges and commissioners have the power to take the whole, or any part of the evidence in any case before them, either *vivâ voce* on oath, or on affidavit.

Before the act 5 & 6 Vict. was passed, the plan of working bankruptcies in the country was as follows:—One hundred and forty separate lists of commissioners (each list consisting of two barristers and three attorneys) were appointed by the Lord Chancellor (on the nomination of the judges), to whom fiats were directed for the administration of the bankrupt law, in one hundred and thirty-two different cities and towns, in various parts of the country, exclusive of London. Country fiats are now addressed to one of the seven district courts of bankruptcy, which are established at Birmingham, Bristol, Exeter, Leeds, Liverpool, Manchester, and Newcastle. The affairs of a bankrupt at Norwich are administered in London; a bankruptcy in the southern part of Nottinghamshire is within the jurisdiction of the Birmingham court, and if the bankrupt has lived in the northern part of the county of Nottingham, it is worked at Leeds. Each court has thus jurisdiction in a district of from forty to upwards of eighty miles in length. The Privy Council is empowered to select the seat of the courts, and to fix and alter their jurisdiction. The act limits the number of commissioners for the district

courts to twelve, who must be sergeants or barristers of seven years' standing, each of whom is competent to exercise the jurisdiction of the court. Two commissioners, with from two to four official assignees, and two deputy-registrars, are appointed to each district court. The Lord Chancellor may order any commissioner or deputy-registrar of the court in London, or other qualified person, to act for or in aid of any country commissioner or deputy-registrar, and *vice versâ;* and in like manner the commissioner or deputy-registrar for one district may act in another. The district courts are auxiliary to each other for proof of debts and examination of witnesses. All fees taken in these courts are accounted for to the chief registrar of the court in London. The principal fee in bankruptcy is 10*l.* on the striking of each docket.

The salaries of the judge, commissioners, and other officers of the Court of Bankruptcy, amounted, in the year ending 1st of January, 1844, to 49,382*l.*; and 12,326*l.* were paid besides as compensation to the old commissioners and other officers, of which amount 7352*l.* was paid to Thurlow, Patentee of Bankrupts, and 468*l.* to Thurlow, Rev. J., Clerk of Hanaper. The whole of this sum of 12,326*l.*, with the exception of 2433*l.* paid to thirteen late commissioners of bankrupts, goes to persons who are entitled on the Parliamentary Return "Hanaper Officers," of whom the Patentee of Bankrupts receives the sum above stated. This office was and is a sinecure. The judge receives 2500*l.* per annum; London commissioners, 2000*l.* (1500*l.* before passing of 5 & 6 Vict.); commissioners of the country district courts, 1800*l.*; the accountant in bankruptcy (first appointed under 5 & 6 Wm. IV. c. 29), 1500*l.*; the Lord Chancellor's secretary of bankrupts, 1200*l.*; two chief registrars, 1000*l.* each; the deputy-registrars in London 800*l.*, and the deputy-registrars of the district courts 600*l.*, per annum each. The Lord Chancellor is empowered to order retiring annuities of 1500*l.* a-year to the judge, and of 1200*l.* to the commissioners; and also retiring annuities of different amounts to the accountant in bankruptcy, registrars, &c. These salaries are paid out of the fund entitled the "secretary of bankrupts' account."

The amount of certain fees taken in the Court of Bankruptcy, London, for the year ending 11th of January, 1844, was 2892*l.*; and from 11th of Nov., 1842, to 11th of Jan., 1844, the fees taken in the seven district courts amounted to 1881*l.* After payments to ushers of the courts, clerks, and other charges, the sum of about 2000*l.* was divided amongst the registrars and deputy-registrars under § 89 of 5 & 6 Vict. c. 122.

The sum paid out as dividends to creditors by the accountant in bankruptcy for each of the following years ending 31st of December, was:—523,148*l.* in 1841; 661,230*l.* in 1842; 1,067,976*l.* in 1843. On the 1st of January, 1844, the Bankruptcy Fund account was 1,506,407*l.*

The following particulars, showing the amount of solicitors' and messengers' bills of costs up to the time of the choice of assignees in the first twenty commissions and fiats removed into the district courts, and of the first twenty registered in the said courts, are taken from a parliamentary paper (5, Sess. 1844):—

District Courts.	Solicitors' Bills.	Messengers' Bills.	Total.
	£.	£.	£.
Birmingham:			
Fiats transferred	56	10	66
New fiats	36	18	54
Manchester:			
Fiats transferred	81	..	..
New fiats	38	15	53
Liverpool:			
Fiats transferred	54	..	..
New fiats	28	12	40
Leeds:			
Fiats transferred	..	..	72
New fiats	..	..	70
Bristol:			
Fiats transferred	..	..	79
New fiats	..	..	41
Newcastle:			
Fiats transferred	..	..	85
New fiats	..	..	54
Exeter:			
Fiats transferred	..	..	98
New fiats	..	..	65

The average costs under twenty fiats removed into the Court of Bankruptcy in London were as follows:—solicitors' costs 76*l.*; messengers' 14*l.* And the costs

under twenty new fiats registered in the same court, after the passing of 5 & 6 Vict. c. 122, against bankrupts residing above forty miles from London, to which distance the London circuit extended, were:—solicitors' costs 44*l.*; messengers' 10*l.* 19*s.*: the totals being respectively 80*l.* and 55*l.*

In the session of 1844 several petitions were presented to Parliament respecting the effect of the recent changes in the administration of the bankrupt law. The petitioners complained of the loss of time and expense occasioned by attending the district courts, the distance being sometimes eighty miles from the place where the bankrupt and the creditors lived. They also alleged that the official assignees of the district court were disqualified by want of local knowledge from managing the bankrupt's estate and effects to the best advantage: and that as dividends can only be paid by application to the district court in person, or by means of an endorsed warrant through an agent, creditors are involved in an expense which was not incurred under the previous administration of the bankrupt law. The bankrupts themselves are also obliged to attend the district court, and to take frequent journeys thereto at the expense of the estate. One part of these objections may be easily done away with by the establishment of several new courts, and various plans of diminishing the expenses complained of may be introduced after further experience. Thus the deputy-registrars of the Leeds District Court append a note to the return given above, in which they state that, "with a view to avoid the heavy charges of the petitioning creditor, solicitor, and others travelling a distance of from forty to seventy miles, and for their loss of time, the commissioners have determined to receive the proofs of the petitioning creditor's debt, &c., upon depositions made out of court, have called upon the solicitors to work the fiat through their agents at Leeds, and have directed the messengers, instead of themselves travelling to seize the effects of the bankrupts, to employ deputies in the nearest towns."

The number of bankruptcies gazetted in England and Wales in 1842 was 1273, and 1112 in 1843. Of this number 322 were in the metropolis, 116 in Lancashire, and 108 in the West-Riding of Yorkshire.

Scotland.—In Scotland the term bankruptcy is applied, not to the process by which an insolvent trader's available funds are collected and distributed among his creditors, but to the act of subjecting persons of any class to certain ordeals which publish to the world their inability to meet the demands against them. A person who is "notour bankrupt" in Scotland, bears a generic analogy to a person who has committed an act of bankruptcy in England, with this leading difference, that it is not a necessary characteristic of the former that he must come within the class of persons whose estates may be distributed by the process of commercial bankruptcy. In Scotland, as in England, the bankrupt, if he be within the class, is liable to the distributing process, which is there called "sequestration." It is necessary to keep in view that a "bankrupt" and a "sequestrated bankrupt" are distinct terms. Every person sequestrated is necessarily a bankrupt, but every person who is a bankrupt is not a person whose estate may be sequestrated.

The criterions by which a person may become a bankrupt have been fixed by certain statutes, the earliest of which now in force is of the year 1691. Various legislative measures were passed for preventing fraudulent alienations by insolvent persons to the prejudice of creditors, and a system for the relief of insolvent debtors who are not mercantile persons was long a branch of the common law as derived from the civilians, and has lately been remodelled by statute. [CESSIO BONORUM.] It was not, however, until the year 1772 that the legislature established a process which, like the bankruptcy system in England, should collect the available assets of a bankrupt merchant into one fund, distribute it through the hands of third parties, and, under judicial supervisance among the creditors according to the proportion of the fund to their respective claims, and in the end dis-

charge the bankrupt from his liabilities. Since the year 1772 there has been a succession of sequestration acts, of which the latest was passed on the 17th of August, 1839 (2 & 3 Vict. c. 42). Its main features of distinction from the immediately previous act (54 Geo. III. c. 137) are these: It enlarges the class of persons who may be subjected to the process: instead of being a process of which every step must be taken in the supreme court, the sequestration, being awarded there, is remitted to the sheriff's local court, where the routine business proceeds under the sanction of the sheriff, who has an authority bearing a general resemblance to that of the commissioner in England. The winding up of the proceedings and the taking the process out of court require the sanction of the supreme judicature. Sequestration reduces the interest which will qualify a creditor to sue for the application of the act, and abbreviates the proceedings.

How a man becomes bankrupt.—A person who is insolvent is made notour bankrupt, by being imprisoned either according to the old form of horning and caption, or in terms of the 1 & 2 Vict. c. 114, or by such writ of imprisonment having been issued against him, which he seeks to defeat by taking sanctuary within the precincts of the Palace of Holyroodhouse, fleeing, absconding, or forcibly defending his person. If the individual be not liable to imprisonment, from his residing in the sanctuary, being abroad, having privilege of parliament, &c., the execution against him of the charge which precedes the warrant of imprisonment, if accompanied by an arrestment of his goods not loosed within fifteen days, or by a poinding of his moveable goods, or by an adjudication of his real property, will make him bankrupt. A person whose estate is sequestrated, if not previously bankrupt, becomes so from the date of the first judicial deliverance in the sequestration. The principal effect of bankruptcy, is to strike at alienations to creditors within sixty days before it, and to equalize attachments against the estate taken within sixty days before and four months after it.

Who may be sequestrated.—The classes of persons coming within the 2 & 3 Vict. c. 41, are enumerated as any debtor "who is or has been a merchant, trader, manufacturer, banker, broker, warehouseman, wharfinger, underwriter, artificer, packer, builder, carpenter, shipwright, innkeeper, hotel-keeper, stable-keeper, coach-contractor, cattle-dealer, grain-dealer, coal-dealer, fish-dealer, lime-burner, printer, dyer, bleacher, fuller, calenderer, and generally any debtor who seeks or has sought his living or a material part thereof, for himself, or in partnership with another, or as agent or factor for others, by using the trade of merchandise, by way of bargains, exchange, barter, commission, or consignment, or by buying and selling, or by buying and letting for hire, or by the workmanship or manufacture of goods or commodities:" (§ 5) unless the debtor consent to the sequestration, he must have been bankrupt, or must have been sixty days in sanctuary within the space of a year, and must have transacted business in Scotland, and must within the preceding year have resided or had a dwelling house in Scotland. The estates of a deceased debtor may under certain restrictions be sequestrated though he was not bankrupt and did not come within the above classification.

Application and awarding.—The application for sequestration is by petition to the court of session. It may be either by the debtor with concurrence of creditors, or by the latter. The persons who may petition or concur are—any one creditor to the extent of 50*l.*; any two to the extent of 70*l.*; and any three or more to the extent of 100*l.* Where the petition is with the debtor's consent, sequestration is immediately awarded. Where it is required solely at the instance of the creditors, measures are taken for citing those concerned, and for procuring evidence of the statements on which the petition proceeds. When sequestration is awarded, the deliverance remits the process to the sheriff of the county, and appoints the times and place of certain meetings for arranging the management of the estate. In all questions under the act, the sequestration is held to commence with the date of the first judicial deliverance to whatever effect, on the application;

and the effect of the process in attaching the funds and neutralising the operations of individual creditors operates by relation from that date. The judgment awarding sequestration is not subject to review, but it may be recalled at the instance of the debtor, and on his showing that it should not have been awarded; and the court may on equitable principles, and for the better management of the estate, recall the sequestration, if nine-tenths of the creditors apply for a recall.

Management.—At their first meeting the creditors either choose an "Interim Factor," or devolve his duties on the sheriff clerk of the county. His functions are confined to the custody and preservation of the estate. He takes possession of the books, documents, and effects, and lodges the money in bank. He has no administrative control, and cannot convert the estate into money, or otherwise attempt to increase its value. The person on whom the estate is finally devolved, the trustee, is elected by a majority in value of the qualified creditors present at a meeting judicially appointed to take place not less than four and not more than six weeks after the date of the awarding of the sequestration. The trustee stands in place of the chosen assignee in England. In Scotland there is no person whose office corresponds with that of the official assignee, but a committee of three creditors, called commissioners, is appointed at the same meeting and in the same manner as the trustee, whose duty it is to superintend the proceedings of the trustee, audit his accounts, fix his remuneration, decide on the payment of dividends, &c. Relations of the bankrupt, and persons interested in the estate otherwise than as simple creditors, are disqualified as trustees and commissioners. The trustee has the duty of managing and recovering the estate, and converting it into money. He is the legal representative of the body of creditors, and in his person are vested all rights of action and others in relation to the estate, of which the debtor is divested by the bankruptcy. He is bound to lodge money as it is received, in bank, under certain statutary regulations fortified by penalties. The trustee is amenable to the court of session and to the sheriff for his conduct. He may be removed by a majority in number and value of the creditors, and one-fourth of the creditors in value may apply for his judicial removal, showing cause. The trustee's title to act commences at the time when his election is judicially confirmed. In the case of a disputed election, the question may be carried from the court of the sheriff, who has in the first place the judicial sanction of the election to the court of session. The judicial proceedings vesting the estate are entered in the registers of real property in Scotland, and at his confirmation all the real and personal property of the bankrupt within the British empire vests in the trustee, and is considered as having vested in him from the date of the sequestration. A copy of the act and warrant of the trustee's confirmation, certified by the clerk of the bill chamber in the court of session, is declared by the statute to be sufficient evidence of the trustee's title, to enable him to sue in any court in the British dominions.

The bankrupt will obtain a warrant of liberation if he have been imprisoned, or otherwise of protection from imprisonment, at the commencement of the process, if there be no valid objection to it. The court of session's warrant is effectual to protect him from imprisonment in all parts of the British dominions. Four-fifths in value of the creditors may award him an allowance until the payment of the second dividend. It is not in any way measured by the amount of the dividend, but is restricted in all cases to a sum within 3*l.* 3*s.* per week. There are provisions for the examination of the bankrupt, his family, servants, &c., and in general for enforcing a discovery of the estate, bearing a general resemblance to the provisions for the like purposes in England. The bankrupt's release from the debts which may be ranked or proved on his estate is accomplished by a judicial discharge. If all the creditors who have qualified concur, he may petition for it immediately after the creditors have held the statutary meeting which follows his examination. Eight months after the date of the sequestration he may petition for it if a majority in number and four-fifths in value

concur. He makes an affidavit that he has made a fair surrender, and after certain formalities tending to publicity, and the elicitation of reasons of objection, he receives his discharge. It is granted either by the sheriff or the lord ordinary of the court of session, and in the former case it is confirmed by the lord ordinary, and registered in the bill chamber of the court of session.

Ranking and Dividends.—What is called in England the proof of debts, is called in Scotland "Ranking." The trustee is the judge of each claim in the first instance, his decision being subject to judicial review. Creditors produce with their claims, affidavits and vouchers. The peculiar character of the law of real property, and the securities and other rights to which it gives rise, operate some distinctions between the ranking in a sequestration in Scotland and proof in England. The most important particular, however, in which the Scottish system differs from the English, is in the absence in the former of the distinction between partnership and individual estates which characterises the latter, the creditors of a company in Scotland being entitled to rank in the bankrupt estates of the individual partners, the claim on the company estate being in each case first valued and deducted. The provisions of 6 Geo. IV. c. 16, in England, regarding contingent and annuity creditors, have been incorporated in the Scottish sequestration act, but it was an old established practice in Scotland for the claims of such creditors to be equitably adjusted. A creditor, to share in a dividend, must lodge his claim at least two months before the time when it is payable. The first dividend is payable on the first lawful day after the expiry of eight months from the date of the sequestration, and the others successively at intervals of four months.

The trustee and commissioners may with the sanction of the creditors summarily dispose of whatever portion of the estate may be in existence twelve months after the date of the sequestration. The unclaimed dividends are lodged in bank, at the direction of the bill chamber clerk, who preserves entries of them in a book called the "Register of Unclaimed Dividends." When the trustee has fulfilled his functions under the act, he calls a meeting of the creditors, that they may record their opinion of his conduct, and on their judgment he may apply to the court for a discharge, parties being heard for their interest: on his being judicially discharged, the sequestration is at an end. The sequestration act contains provisions for suspending the judicial realization and distribution of the estate by a composition contract. These provisions are nearly in the same terms with those for the same purpose in the English statute, which were originally adopted from the Scottish sequestration system. (*On the Law of Bankruptcy, Insolvency, and Mercantile Sequestration in Scotland*, by J. H. Burton, Esq., Advocate.)

Ireland.—The Irish law of bankruptcy has been gradually assimilated to the English law by several recent acts (6 & 7 Wm. IV. c. 14; amended by 1 Vict. c. 48, and 2 & 3 Vict. c. 86). There is no separate court of bankruptcy; but there are two commissioners who are empowered to act by a commission under the great seal. There are no official assignees.

United States of North America.—In 1841 an act was passed by Congress to establish a uniform system of bankruptcy throughout the United States of North America. The act came into operation early in 1842. The courts invested with jurisdiction, in the first instance, in bankruptcy cases, are the District Courts of the United States; and they are empowered to prescribe rules and regulations and forms of proceedings in all matters of bankruptcy, subject to the revision of the Circuit Court of the district. The district courts decide if the persons who apply to them, whether debtors or creditors, are entitled to the provisions of the bankrupt law; appoint commissioners to receive proofs of debt, and assignees of the estate; and make orders respecting the sale of the bankrupt's property. If the debtor himself commences proceedings, he gives in a list of his creditors and an account of his property, and twenty days' notice at least must be given of the day when the petition will be heard, when any

person can be heard against it. If the bankruptcy is decreed, the bankrupt's property is vested in an assignee. The bankrupt is allowed to retain his necessary household and kitchen furniture, and such other articles as the assignee shall think proper, with reference to the family, condition, and circumstances of the bankrupt, but the whole is not to exceed 300 dollars in value: the wearing-apparel of the bankrupt, his wife, and children, may also be retained by him in addition. An appeal lies to the court from the decision of the assignee in this matter. The bankrupt next petitions for a full discharge from all his debts, and a certificate thereof, and after seventy days' public notice, and personal service or notice by letter to each creditor, the petition comes on for hearing. The grounds for refusing the bankrupt his discharge and certificate are the same generally as those which disentitle a bankrupt in this country to the favourable consideration of the court—concealment of property, fraudulent preference of creditors, falsification of books, &c. In cases of voluntary bankruptcy a preference given to one creditor over another disentitles the bankrupt to his discharge, unless the same be assented to by a majority of those who have not been preferred. If at the hearing a majority of the creditors in number and value file their written dissent to the allowance of the bankrupt's certificate and discharge, he may demand a trial by jury, or may appeal to the next circuit court; and upon a full hearing of the parties, and proof that the bankrupt has conformed to the bankrupt laws, the court is bound to decree him his discharge and grant him a certificate. The discharge and certificate are equivalent to the certificate granted to bankrupts in England. In case of a second bankruptcy the bankrupt is not entitled to his discharge unless 75 per cent. has been paid on the debt of each creditor which shall have been allowed. Persons who work for wages are only entitled to wages to the extent of twenty-five dollars each out of a bankrupt's estate for labour done within six months next before the bankruptcy.

France.—In June, 1838, the French law of 1807 on bankruptcy and insolvency was abrogated, and an entirely new law was promulgated, which now forms Book III. of the Code de Commerce (Des Faillites et Banqueroutes). In France, the Tribunal of Commerce acts as a court of bankruptcy, and its judgment declares the insolvency (faillite). The same judgment names the "juge-commissaire," who is a member of the Tribunal, and discharges duties analogous to those formerly performed in England by the old commissioners of bankruptcy: he fixes the sum to be allowed to the trader for support, conducts the examination into the affairs of the estate, directs the sale of property, &c. In some cases an appeal lies from his decisions to the Tribunal of Commerce. The "syndics" act as assignees, but are not selected from the body of creditors, and they are remunerated for their services at the discretion of the Tribunal. As the expense of prosecuting fraudulent bankrupts, when successful, is defrayed by the state, minutes, &c. of each case are made whenever required, for the use of the public department which has cognizance of prosecutions in bankruptcy; and the report which the syndics make to the "juge-commissaire" on the state of the trader's affairs is always transmitted with observations to the "procureur du roi."

A trader may be declared insolvent at the instance of one or more of his creditors; but if he ceases to fulfil his engagements he is required to make a declaration of insolvency before the Tribunal of Commerce, accompanied by a statement of his affairs. The Tribunal next appoints a "juge-commissaire" for this particular case, and also provisional syndics. A "juge de paix" is then required to place his seal on the effects, and the trader himself is taken to a debtors' prison, or placed in custody of an officer; though, when a voluntary declaration of insolvency has been made, he is not deprived of his liberty.

The last meeting of creditors is held for the purpose of hearing a report by the syndics of their proceedings, and of deliberating on the concordat, which is in most respects equivalent to a certificate in the English bankrupt law, and must

be signed at this meeting, at which the trader must be present. The syndics oppose or favour the concordat as the case may be. The concordat requires the consent of a majority of the creditors who also represent three-fourths of the whole debts that are proved. There can be no concordat in the case of fraudulent bankruptcy. The concordat is incomplete until it has received the sanction of the Tribunal of Commerce, acting upon the report of the juge-commissaire. This completion of the process is called the "homologation;" and, after giving a statement to the trader, showing the result of their labours, in presence of the juge-commissaire, the functions of the syndics cease. The trader may be prosecuted for fraudulent bankruptcy after the homologation.

The term "Banqueroute" is applied in the French code to insolvency which is clearly traceable to imprudence or extravagance, and the bankrupt is liable to prosecution. The Code de Commerce declares that any trader against whom the following circumstances are proved is guilty of Simple bankruptcy:—If his personal or household expenses have been excessive; if large sums have been lost in gambling, stock-jobbing, or mercantile speculations; if, in order to avoid bankruptcy, goods have been purchased with a view of selling them below the market price; or if money has been borrowed at excessive interest; or if, after being insolvent, some of the creditors have been favoured at the expense of the rest. In the following cases also the trader is declared a Simple bankrupt:—1. If he has contracted, without value received, greater obligations on account of another person than his means or prospects rendered prudent. 2. A bankruptcy for a second time, without having satisfied the obligations of a preceding concordat. 3. If the trader has failed to make a voluntary declaration of insolvency within three days of the cessation of his payments, or if the declaration of insolvency contained fraudulent statements. 4. If he failed to appear at the meeting of the syndics. 5. If he has kept bad books, although without fraudulent intent.

It is fraudulent bankruptcy when an insolvent has secreted his books, concealed his property, made over or misrepresented the amount of his capital, or made himself debtor for sums which he did not owe. A fraudulent bankrupt who flees to England may be surrendered under the CONVENTION TREATY.

It has been decided by the French tribunals that a certificate obtained in England by an English trader who flees to France does not free him from the demands of a French creditor who has not been a party to it.

BANNERET, an English name of dignity, now nearly if not entirely extinct. It denoted a degree which was above that expressed by the word *miles* or *knight*, and below that expressed by the word *baro* or *baron*. Milles, speaking of English dignities, says that the banneret was the last among the greatest and the first of the second rank. Many writs of the early kings of England run to the earls, barons, bannerets, and knights. When the order of baronet was instituted, an order with which we must be careful not to confound the banneret, precedence was given to the baronet above all bannerets, except those who were made in the field, under the banner, the king being present.

This clause in the baronet's patent brings before us one mode in which the banneret was created. He was a knight so created in the field, and it is believed that this honour was conferred usually as a reward for some particular service. Thus, in the fifteenth of King Edward III., John de Copeland was made a banneret for his service in taking David Bruce, king of Scotland, at the battle of Durham. John Chandos, a name which continually occurs in the history of the wars of the Black Prince, and who performed many signal acts of valour, was created a banneret by the Black Prince and Don Pedro of Castile. It is in the reign of Edward III. that we hear most of the dignity of banneret. Reginald de Cobham and William de la Pole were by him created bannerets. In this last instance the creation was not in the field, nor for military services, for De la Pole was a merchant of Hull, and his services consisted in supplying the king with money

for his continental expeditions. We have therefore here an instance of a second mode by which a banneret might be created, that is, by patent-grant from the king. Milles mentions a third mode, which prevails also on the Continent. When the king intended to create a banneret, the person about to receive the dignity presented the sovereign with a swallow-tailed banner rolled round the staff; the king unrolled it, and, cutting off the ends, delivered it a *bannière quarrée* to the new banneret, who was thenceforth entitled to use the banner of higher dignity. Sometimes the grant of the dignity was followed by the grant of means by which to support it. This was the case with some of those above mentioned. De la Pole received a munificent gift, the manor of Burstwick in Holderness, and 500 marks annual fee, issuing out of the port of Hull. (Dugdale's *Baronage*, vol. ii. p. 183.)

The rank of the banneret is well understood, but what particular privilege he enjoyed above other knights is not now known. It was a personal honour; and yet in De la Pole's patent it is expressed that the grant was made to him to enable him and his heirs the better to support his dignity. But the patent was perhaps irregular, as it seems to have been surrendered. No catalogue has been formed of persons admitted into this order, and it is presumed that they were few. The institution of the order of baronets probably contributed greatly to the abolition of the banneret. The knights of the Order of the Bath in modern times approach nearest to the bannerets of former days. In the civil wars, Captain John Smith, who rescued the king's standard at the battle of Edgehill, is said to have been created a banneret. When King George III. intended to proceed to the Nore, in 1797, to visit Lord Duncan's fleet, it was rumoured that he designed to create several of the officers bannerets. The weather was unfavourable, and the king returned without reaching the fleet; but the dignity which he conferred on Captain (afterwards Sir Henry) Trollope, in whose vessel he sailed, was understood to be that of a knight banneret.

The French antiquaries since Pasquier have represented the banneret as having been so called as being a knight entitled to bear a banner in the field; or, in other words, a knight whose quota of men to be furnished to the king's army for the lands he held of him were of that number (it is uncertain what) which constituted of itself a body of men sufficient to have their own leader. In England it is believed there were few tenants bringing any considerable number of men who were not of the rank of the *barones*.

BANNS OF MARRIAGE. [MARRIAGE.]

BAR (in French, *Barreau*) is a term applied, in a court of justice, to an enclosure made by a strong partition of timber, three or four feet high, with the view of preventing the persons engaged in the business of the court from being incommoded by the crowd. It has been supposed to be from the circumstance of the counsel standing there to plead in the causes before the court, that those lawyers who have been called to the bar, or admitted to plead, are termed *barristers*, and that the body collectively is denominated *the bar*, but these terms are more probably to be traced to the arrangements in the Inns of Court. [BARRISTER; INNS OF COURT.] Prisoners are also placed for trial at the same place; and hence the practice arose of addressing them as the "prisoners at the bar." The term bar is similarly applied in the houses of parliament to the breast-high partition which divides from the body of the respective houses a space near the door, beyond which none but the members and clerks are admitted. To these bars witnesses and persons who have been ordered into custody for breaches of privilege are brought; and counsel stand there when admitted to plead before the respective houses. The Commons go to the bar of the House of Lords to hear the king's speech at the opening and close of a session.

A trial at bar is one which takes place before all the judges at the bar of the court in which the action is brought.

BARBARIAN. The Greek term βάρβαρος (barbaros) appears originally to have been applied to language, signifying a mode of speech which was unintelli-

gible to the Greeks; and it was perhaps an imitative word intended to represent a confused and indistinct sound. (*Iliad*, ii. 867; and Strabo, cited and illustrated in the *Philological Museum*, vol. i. p. 611.) *Barbaros*, it will be observed, is formed by a repetition of the same syllable, *bar-bar-os*. Afterwards, however, when all the races and states of Greek origin obtained a common name, it obtained a general negative sense, and expressed all persons who were not Greeks. (Thucydides, i. 3.) At the same time as the Greeks made much greater advances in civilization, and were much superior in natural capacity to their neighbours, the word barbarus obtained an accessary sense of inferiority both in cultivation and in native faculty, and thus implied something more than the term ξενός, or foreigner. At first the Romans were included among the barbarians; then *barbari* signified all who were not Romans or Greeks. In the middle ages, after the fall of the Western empire, it was applied to the Teutonic races who overran the countries of western Europe, who did not consider it as a term of reproach, since they adopted it themselves, and used it in their own codes of law as an appellation of the Germans as opposed to the Romans. At a later period it was applied to the Moors, and thus an extensive tract on the north of Africa obtained the name of Barbary.

Barbarian, in modern languages, means a person in a low state of civilization, without any reference to the place of his birth, so that the native of any country might be said to be in a state of barbarism. The word has thus entirely lost its primitive and proper meaning of *non-Grecian*, or *non-Roman*, and is used exclusively in that which was once its accessary and subordinate sense of rude and uncivilized.

BARBER-SURGEONS. In former times, both in this and other countries, the art of surgery and the art of shaving went hand in hand. As to the barbiers-chirurgiens in France, see the *Diction. des Origines*, tom. i. p. 189.—They were separated from the barbiers-perruquiers in the time of Louis XIV., and made a distinct corporation.

The barbers of London were first incorporated by King Edward IV. in 1461, and at that time were the only persons who exercised surgery; but afterwards others, assuming the practice of that art, formed themselves into a voluntary association, which they called the Company of Surgeons of London. These two companies were, by an act of parliament passed in the 32 Henry VIII. c. 41, united and made one body corporate, by the name of the Barbers and Surgeons of London. This act however at once united and separated the two crafts. The barbers were not to practise surgery further than drawing of teeth; and the surgeons were strictly prohibited from exercising "the feat or craft of barbery or shaving." The surgeons were allowed yearly to take, at their discretion, the bodies of four persons after execution for felony, "for their further and better knowledge, instruction, insight, learning, and experience in the said science or faculty of surgery;" and they were moreover ordered to have "an open sign on the street-side where they should fortune to dwell, that all the king's liege people there passing might know at all times whither to resort for remedies in time of their necessity." Four governors or masters, two of them surgeons, the other two barbers, were to be elected from the body, who were to see that the respective members of the two crafts exercised their callings in the city agreeably to the spirit of the act.

The privileges of this Company were confirmed in various subsequent charters, the last bearing date the 15th of April, 5th Charles I.

By the year 1745 it was discovered that the two arts which the Company professed were foreign to and independent of each other. The barbers and the surgeons were accordingly separated by act of parliament, 18th Geo. II., and made two distinct corporations.

(Pennant's *London*, p. 255; *Stat. of the Realm*, vol. i. p. 794; Edmondson's *Compl. Body of Heraldry*; Strype's edit. of Stow's *Survey of London*, b. v. ch. 12.)

BARKERS. [AUCTION.]

BARON, BARONY. Sir Henry Spelman (*Glossarium*, 1626, voce *Baro*) regards the word Baron as a corruption of

the Latin *vir:* but it is a distinct Latin word, used by Cicero, for instance, and the supposition of corruption is therefore unnecessary. The Spanish word *varon*, and the Portuguese *barão*, are slightly varied forms. The radical parts of *vir* and *baro* are probably the same, *b* and *v* being convertible letters, as we observe in the forms of various words. The word *barones* (also written *berones*) first occurs, as far as we know, in the book entitled *De Bello Alexandrino* (cap. 53), where barones are mentioned among the guards of Cassius Longinus in Spain; and the word may possibly be of native Spanish or Gallic origin. The Roman writers, Cicero and Persius, use the word *baro* in a disparaging sense; but this may not have been the primary signification of the word, which might simply mean *man*.

But the word had acquired a restricted sense before its introduction into England, and probably it would not be easy to find any use of it in English affairs in which it denoted the whole male population, but rather some particular class, and that an eminent class.

Of these by far the most important is the class of persons who held lands of a superior by military and other honourable services, and who were bound to attendance in the courts of that superior to do homage, and to assist in the various business transacted there. The proper designation of these persons was the Barons. A few instances selected from many will be sufficient to prove this point. Spelman quotes from the *Book of Ramsey* a writ of King Henry I., in which he speaks of the Barons of the honour of Ramsey. In the earliest of the Pipe Rolls in the Exchequer, which has been shown by its late editor to belong to the thirty-first year of King Henry I., there is mention of the barons of Blithe, meaning the great tenants of the lord of that honour, now call the honour of Tickhill. Selden (*Titles of Honour*, 4to. edit. p. 275) quotes a charter of William, Earl of Gloucester, in the time of Henry II., which is addressed "Dapifero suo et omnibus baronibus suis et hominibus Francis et Anglis," meaning the persons who held lands of him. The court itself in which these tenants had to perform their services is called to this day the Court Baron, more correctly the court of the Barons, the Curia Baronum.

What these barons were to the earls, and other eminent persons whose lands they held, that the earls and those eminent persons were to the king: that is, as the earls and bishops, and other great landowners, to use a modern expression, had beneath them a number of persons holding portions of their lands for certain services to be rendered in the field or in the court, so the lands which those earls and great people possessed were held by them of the king, to whom they had in return certain services to perform of precisely the same kind with those which they exacted from their tenants; and as those tenants were barons to them, so were they barons to the king. But, inasmuch as these persons were, both in property and in dignity, superior to the persons who were only barons to them, the term became almost exclusively, in common language, applied to them; and when we read of the barons in the early history of the Norman kings of England, we are to understand the persons who held lands immediately of the king, and had certain services to perform in return.

Few things are of more importance to those who would understand the early history and institutions of England, than to obtain a clear idea of what is meant by the word baron, as it appears in the writers on the affairs of the first two centuries and a half after the Conquest. They were the tenants in chief of the crown. But to make this more intelligible, we may observe that, after the Conquest, there was an actual or a fictitious assumption of absolute property in the whole territory of England by the king. The few exceptions in peculiar circumstances need not here be noticed. The king, thus in possession, granted out the greatest portion of the soil within a few years after the death of Harold and his own establishment on the throne. The persons to whom he made these grants were, 1. The great ecclesiastics, the prelates, and the members of the monastic institutions, whom probably, in most instances, he only allowed to retain, under a different species of tenure, what had been settled

upon them by Saxon piety. 2. A few Saxons, or native Englishmen, who in a few rare instances were allowed to possess lands under the new Norman master. 3. Foreigners, chiefly Normans, persons who had accompanied the king in his expedition and assisted him in obtaining the throne: these were by far the most numerous class of the Conqueror's beneficiaries. Before the fourteenth or fifteenth year of his reign the distribution of the lands of England had been carried nearly to the full extent to which it was designed to carry it; for the king meant to retain in his own hands considerable tracts of land, either to form chaces or parks for field-sports, to yield to him a certain annual revenue in money, to be as farms for the provision of his own household, or to be a reserve fund, out of which hereafter to reward services which might be rendered to him. These lands formed the demesne of the crown, and are what are now meant when we speak of the ancient demesne of the crown.

When this was done a survey was taken of the whole: first, of the demesne lands of the king; and next, of the lands which had been granted out to the ecclesiastical corporations, or to the private persons who had received portions of land by the gift of the king. At the same time, the commissioners, to whom the making of this survey was entrusted, were instructed to inquire into the privileges of cities and boroughs, a subject with which we have not at present any concern. The result of this survey was entered of record in the book which has since obtained the name of *Domesday Book*, the most august as well as the most ancient record of the realm, and for the early date, the extent, variety, and importance of the information which it contains, unrivalled, it is believed, by any record of any other nation. We see there who the people were to whom the king had granted out his lands, and at the same time what lands each of those people held. It presents us with a view, which is nearly complete, of the persons who in the first twenty years after the Conquest formed the barons of England, and of the lands which they held: the progenitors of the persons who, in subsequent times, were the active and stirring agents in wresting from King John the great charter of liberties, and who asserted rights or claims which had the effect of confining the kingly authority of England within narrower limits than those which circumscribed the regal power in most of the other states of Europe.

The indexes which have been prepared to 'Domesday-Book' present us with the names of about 400 persons who held lands immediately of the king. Some of these were exceedingly small tenures, and merged at an early period in greater, or, through forfeitures or other circumstances, were resumed by the crown. On the other hand, 'Domesday-Book' does not present us with a complete account of the whole tenancies in chief, because—1. The four northern counties are, for some reason not at present understood, omitted in the survey; and 2. There was a creation of new tenancies going on after the date of the survey, by the grants of the Conqueror or his sons of portions of the reserved demesne. The frequent rebellions, and the unsettled state in which the public affairs of England were in the first century after the Conquest, occasioned many resumptions and great fluctuations, so that it is not possible to fix upon any particular period, and to say what was precisely the number of tenancies in chief held by private persons; but the number, before they were broken up when they had to be divided among coheiresses, may be taken, perhaps, on a rude computation, at about 350. In this the ecclesiastical persons who held lands in chief are not included.

When we speak of the king having given or granted these lands to the persons who held them, we are not to understand it as an absolute gift for which nothing was expected in return. In proportion to the extent and value of the lands given, services were to be rendered, or money paid, not in the form of an annual rent, but as casual payments which the king had a right, under certain circumstances, to demand. The services were of two kinds: first, military service, that is, every one of those tenants (tenants from *teneo*, to hold) was bound to give personal service to the king in his wars,

and to bring with him to the royal army a certain quota of men, corresponding in number to the extent and value of his lands; and, secondly, civil services, which were of various kinds, sometimes to perform certain offices in the king's household, to execute certain duties on the day of his coronation, to keep a certain number of horses, hounds, or hawks for the king's use, and the like. But, besides these honourable services, they were bound to personal attendance in the king's court when the king should please to summon them, and to do homage to him (homage from *homo*), to acknowledge themselves to be his *homines*, or *barones*, and to assist in the administration of justice, and in the transaction of other business which was done in the court of the king.

We see in this the rude beginnings of the modern parliaments, assemblies in which the barons are so important a constituent. But before we enter on that part of the subject, it is proper to observe, that among the great tenants of the crown there was much diversity both of rank and property. We shall pass over the bishops and other ecclesiastics, only observing, that when it is said that the bishops have seats in parliament in virtue of the baronies annexed to their sees, the meaning of the expression is, that they sit there as any other lay homagers or barons of the king, as being among the persons who held lands of the crown by the services above mentioned; which is correct as far as parliament is regarded as a court for the administration of justice, but doubtful so far as it is an assembly of wise men to advise the king in matters touching the affairs of the realm. Amongst the other tenants we find some to whose names the word *vicecomes* is annexed. On this little has been said by the writers on English dignities, and it is doubtful whether it is used in 'Domesday' as an hereditary title, or only as a title of office answering to the present sheriff. But we find some who have indisputably a title, in the proper sense of the word, annexed to their names, and which we know to have descended to their posterity. These are the *comites* of 'Domesday-Book,' where, by the Latin word *comes*, they have represented the earl of the Saxon times; and as these persons were raised above the other tenants in dignity, so were they, for the most part, distinguished by the greater extent of the lands held by them. Among those to whose names no mark of distinction is annexed, there was also great diversity in respect of the extent of territory granted to them. Some had lands far exceeding the extent of entire counties, while others had but a single parish or township, or, in the language introduced at the Conquest, but a single manor, or two adjacent manors, granted to them.

All these persons, the earl included, were the barons, or formed the baronage of England. Whether the tenancy were large or small, they were all equally bound to render their service in his court when the king called upon them. The diversity of the extent of the tenure affords a plausible discriminatory circumstance between two classes of persons who appear in early documents—the greater and the lesser barons; but a better explanation of this distinction may be given. In the larger tenancies, the persons who held them granted out portions to be held of them by other parties upon the same terms on which they held of the king. As they had to furnish a quota of men when the king called upon them, so they required their tenants to furnish men equipped for military service proportionate to the extent of lands which they held when the king called upon them. As they had to perform civil services of various kinds for the king, so they appointed certain services of the same kind to be performed by their tenants to themselves. As they had to do homage from time to time to the king, and to attend in his court for the administration of justice and for other business touching the common interest, so they required the presence of their tenants to acknowledge their subjection and to assist in the administration of that portion of public justice which the sovereign power allowed the great tenants to administer. The castles, the ruins of which exist in so many parts of the country, were the seats of these great tenants, where they held their courts, received the homage, and administered justice, and were to the sur-

rounding homagers what Westminster Hall, a part of the court of the early kings of England, was to the tenantry in chief. The Earl of Chester is said to have thus subinfeuded only eight persons in the vast extent of territory which the Conqueror granted to him. These had, accordingly, each very large tracts, and they formed, with four superiors of religious houses, the court, or, as it is sometimes called, the parliament of the Earls of Chester. These persons are frequently called the barons of that earldom; but the number of persons thus subinfeuded was usually greater, and the tenancies consequently smaller. They were, for the most part, persons of Norman origin, the personal attendants, it may be presumed, of the great tenant. There is no authentic register of them, as there is of the tenants in chief; but the names of many of them may be collected from the charters of their chief lords, to which they were, in most instances, the witnesses. These, it is presumed, constitute the class of persons who are meant by the Lesser Barons, when that term is used by writers who aim at precision.

Many of these Lesser Barons, or Barons of the Barons, became the progenitors of families of pre-eminent rank and consequence in the country. For instance, the posterity of Nigellus, the Baron of Halton, one of the eight of the county of Chester, through the unexpected extinction of the male posterity of Ilbert de Laci, one of the greatest of the tenants in chief beneath the dignity of an earl, and whose castle of Pontefract, though in ruins, still shows the rank and importance of its early owners, became possessed of the great tenancy of the Lacis, assumed that name as the hereditary distinction, married an heiress of the Earls of Lincoln, and so acquired that Earldom; and when at length they ended in a female heiress, she was married to Thomas, son of Edmond, Earl of Lancaster, son of King Henry III. The ranks, indeed, of the tenants in chief, or greater barons, were replenished from the class of the lesser barons: as in the course of nature cases arose in which there was only female issue to inherit. But even their own tenancies were sometimes so extensive, that they were enabled to exhibit a miniature representation of the state and court of their chief: they affected to subinfeud; to have their tenants doing suit and service; and in point of fact, many of the smaller manors at the present day are but tenures under the lesser barons, who held of the greater barons, who held of the king. The process of subinfeudation was checked by a wise statute of King Edward I., who introduced many salutary reforms, passed in the eighteenth year of his reign, commonly called the statute *Quia Emptores, &c.*, which directed that all persons thus taking lands should hold them not of the person who granted them, but of the superior of whom the granter himself held.

The precise amount and precise nature of the services which the king had a right to require from his barons in his court, is a point on which there seems not to be very accurate notions in some of the writers who have treated on this subject; and a similar want of precision is discernible in the attempt at explaining how to the great court baron of the king were attracted the functions which belonged to the deliberative assembly of the Saxon kings, and the *Commune Concilium* of the realm, the existence of which is recognised in charters of some of the earliest Norman sovereigns. The fact, however, seems to be admitted by all who have attended to this subject, that the same persons who were bound to suit and service in the king's court constituted those assemblies which are called by the name of parliaments, so frequently mentioned by all our early chroniclers, in which there were deliberations on affairs touching the common interest, and where the power was vested of imposing levies of money to be applied to the public service. It is a subject of great regret to all who wish to see through what processes and changes the great institutions of the country have become what we now see them, that the number of public records which have descended to us from the first hundred and fifty years after the Conquest is so exceedingly small, and that those which remain afford so little information respecting this most interesting point of inquiry.

There is, however, no reasonable doubt that the parliament of the early Norman kings did consist originally of the persons who were bound to service in the king's court by the tenure of their lands. But when we come to the reign of King Edward I., and obtain some precise information respecting the individuals who sat in parliament, we do not find that they were the whole body of the then existing tenantry in chief, but rather a selection from that body, and that there were among those who came by the king's summons, and not by the election and deputation of the people, some who did not hold tenancies in chief at all. To account for this, it has been the generally received opinion, that the increase of the number of the tenants in chief (for when a fee fell among co-heiresses it increased the number of such tenants) rendered it inconvenient to admit the whole, and especially those whose tenancies were sometimes only the fraction of the fraction of the fee originally granted; and that the barons and the king, through a sense of mutual convenience, agreed to dispense with the attendance of some of the smaller tenants. Others have referred the change to the latter years of the reign of King Henry III.; when the king, having broken the strength of the barons at the battle of Evesham, established a principle of selection, summoning only those among the barons whom he found most devoted to his interest. It is matter of just surprise that points of such importance as these in the constitutional history of the country should be left to conjecture; and especially, as from time to time claims are presented to parliament by persons who assert a right to sit there as being barons by tenure, that is, persons who hold lands immediately of the king, and whose ancestors, it is alleged, sat by virtue of such tenure. The committee of the House of Lords, which sat during several sessions of parliament to collect from chronicle, record, and journal everything which could be found touching the dignity of a peer of the realm, made a very voluminous and very instructive Report in 1819. This has been followed by reports on the same subject by other committees. They all confess that great obscurity rests upon the original constitution of parliament, and suppose the probability that there may still be found among the unexamined records of the realm something which may clear away at least a portion of the obscurity which rests upon it. [LORDS, HOUSE OF, and PARLIAMENT.]

We are now arrived at a time when the word *baron* acquired a sense still more restricted than that which has hitherto belonged to it. Later than the reign of Edward II. we seldom find the word *baron* used in the chronicles to designate the whole of that formidable body who were next in dignity to the king himself, who formed his army and his legislative assembly, and who forced the king to yield points of liberty either to themselves as a class or to the whole community of Englishmen. The counts or earls, from this time, stand out more prominently as a distinct order. There were next introduced into that assembly persons under the denomination of dukes, marquesses, and viscounts; to all of whom was given a precedence before those barons who had not any dignity, strictly so called, annexed to the service which they had to render in parliament. The baron became the lowest denomination in the assembly of peers, possessing the same rights of discussing and voting with any other member of the house, but remaining destitute of those honorary titles and distinctions the possession of which entitled others to step before him. The term also ceased to be applied to those persons who, possessing a tenancy in chief, were yet not summoned by the king to attend the parliament; and the right or duty of attendance, from the time of King Edward I., has been founded, not, as anciently, upon the tenure, but on the writ which the king issued commanding their attendance.

Out of this has arisen the expression *barons by writ*. The king issued his writ to certain persons to attend in parliament, and the production of that writ constituted their right to sit and vote there. Copies of these writs were taken, and are entered on what is called the close roll at the Tower. The earliest are in the latter part of the reign of King Henry III., in

the forty-ninth of his reign, when the king was a prisoner in the hands of Simon de Montfort, who did what he pleased in the king's name. There are many such writs existing in the copies taken of them, of the reign of Edward I., and all subsequent kings, down to the present time. They are addressed to the archbishops and bishops, the prior of Saint John of Jerusalem, many abbots and priors, the earls and peers of the higher dignities as they were introduced into the peerage, and to a number of persons by their names only, as William de Vescy, Henry de Cobham, Ralph Fitzwilliam, William la Zouch, and the like—portions of the baronage whom the king chose to call to his councils. Upon this the question arises, whether when a person who was a baron by tenure received the king's writ to repair to the parliament, the receipt of the writ, and obedience to it, created in him a dignity as a lord of parliament which adhered to him during his life, and was transmitted to his heir. Upon this question the received opinion undoubtedly has been that a heritable dignity was created; that once a baron, by sitting under authority of the king's writ, always a baron; and that the barony would endure as long as there were heirs of the body of the person to whom the king's writ had issued. Upon this, the received opinion, there have been many adjudications of claims to dignities, and yet the Lords' Committee on this subject express very strong doubts respecting the doctrine, and contend that there are persons to whom the king's writ issued, and who took their seat accordingly, to whose heirs similar writs never went forth, though there was no bar from nonage, fatuity, or attainder. On the other hand, there is the strong fact, that we do find by the writs of summons, that they were addressed to the several members of many of the great families of England, as they rose in successive generations to be the heads of their houses: that, when it happened that a female heiress occurred, her issue was not unfrequently set in the place in parliament which her ancestors had occupied; and that when the new mode arose in the time of Richard II., of creating barons by patent, in which a right was acknowledged in the posterity of the person so created, the ancient barons who had sat by virtue of the king's writ to them and their ancestors did not apply for any ratification of their dignity by patent, which they would have done had they not conceived that it was a heritable dignity, as secure as that granted by the king's patent.

The doubt of the Lords' Committees, however, shows that this is one of the many points touching the baron on which there is room for question. The practice, however, has been hitherto to admit that proof of the issuing of the writ, and of obedience to it, by taking a seat in parliament, or what is technically called proof of sitting, entitles the person who is heir of the body of a person so summoned to take his seat in parliament in the place which his ancestor occupied. Nevertheless, it would seem, from the report of the Lords' Committees, that in cases in which one person only of a family has been summoned at some remote period, and none of his known posterity near his time, this was no creation of the dignity of a baron, or of a peer in parliament, which could be claimed at this distance of time by any person, however clearly he might show himself to be the heir of the body of the person so summoned. But that, in cases in which the writ and the sitting can be proved respecting several persons in succession in the same line, as in Mauley, Roos, Furnival, Clifford, and many other families, there is an heritable dignity created, liable to no defeazance, and that this dignity may be claimed by any person who at this day can show himself to be the heir of the body of the person to whom the original writ issued.

In interpreting the phrase heir of the body, the analogy of the descent of the corporeal hereditaments in the feudal times is followed. That is, if a person die seised of the dignity of baron, and leave a brother and an only child, a daughter, the daughter shall inherit in preference to the brother, though the dignity has been transmitted from some person who is ancestor to them both. This fact clearly shows how close a connexion there is between the dignity and

the lands, the descent of both being regulated by the same principle. The consequence of this principle is, that through a portion of the baronage there has been an introduction of new families into the peerage without the sanction of the crown; for the heiress of one of these baronies may now bestow herself in marriage at her pleasure: and though it is not held that the husband can claim the benefit of the tenancy by courtesy principle (though doubts are entertained on this point), yet the issue of the husband may undoubtedly, whoever he may be, take his place in parliament in the seat which his mother would have occupied had she been a male. Practically, the effect of this upon the composition of the House of Peers has been very small indeed.

The case of co-heiresses demands a distinct notice, because it will lead to the explanation of a phrase which is often used by persons who seem not to have very distinct notions concerning what is implied by it. Lands may be divided, but a dignity is by its very nature indivisible. Thus, if the representative of one of the ancient barons of parliament die, leaving four daughters and no son, his lands may be divided in equal portions among them, and would be so divided according to the principle of the feudal system. But the dignity could not be divided; and as the principle of that system was against any distinction among co-heiresses (reserving the occurrence in the course of nature of persons dying leaving no son but several daughters, to be the means of preventing the too great accumulation of lands in the same person, and of breaking up from time to time the great tenancies), it made no provision that either the *caput baroniæ* or a dignity that was indivisible should descend to the eldest or any daughter in preference to her sisters. It therefore fell into abeyance. [ABEYANCE.] It was not extinguished or destroyed, but it lay in a sort of silent partition among the sisters; and in this dormant, but not dead state, it lay among the posterity of the sisters. But if three of the four died without leaving issue, or if after a few generations the issue of three of them became utterly extinct, the barony would then revive, and the surviving sister, if alive, or the next heir of her body, would become entitled to the dignity, and might, on proof of the necessary facts, claim a writ of summons as if there had been no suspension. Again, it is a part of the royal prerogative to determine an abeyance; that is, the king may select one of the daughters, and give to her the place, state, and precedency which belonged to her father; and then the barony will descend to the several heirs in succession of her body, as entire as if there had never been any state of abeyance. But this does not interfere with the rights of the other co-heirs, who, and whose posterity, remain in precisely the same position in which they stood before the king determined the abeyance in favour of a particular branch. In this way the barony of Clifford, which has several times fallen into abeyance, has been lately given by the king to a co-heir. The same was the case with the baronies of Roos and Berners, and indeed it is in a great measure to the exercise of this prerogative of the crown that we owe the presence in the House of Peers of barons who take their seats at the head of the bench, and date their sittings from the fourteenth and thirteenth centuries.

The principle of the feudal law, which was favourable to the claims of females, was fraught with ruin to noble houses. The great family which springs from Hugh Capet, and a few other great families of the Continent, have had the address to escape from the operation of the principle by availing themselves of what is called the Salic Law; and to this is owing that they still hold the rank in which we now see them, a thousand years after they first became illustrious. This must have been early perceived in England, and it was probably this consideration which led to the introduction of a class of barons, the descent of whose dignity should not be regulated by the principle of the feudal descent of hereditaments, but should be united inseparably with the male line of persons issuing from the stock of the original grantee. This innovation is believed to have first taken place in the reign of King Richard II., who in his eleventh year created John Beauchamp of Holt a baron, not merely

by writ of summons to parliament, but by a patent, in which it was declared that he was advanced to the same state, style, and dignity of a baron, and that the same state, style, and dignity should descend to the male heirs of his body. Thus and at this time the class of barons by patent arose. The precedent thus set was, with very few exceptions, followed in the subsequent reigns; and by far the great majority of persons who now occupy the barons' bench in parliament are the male representatives of persons on whom the dignity has been conferred, accompanied by a patent, which directs the course of its descent to be in the male heirs for the time being of the original grantee; and that should it ever happen that they are exhausted, the dignity becomes extinct.

It is unnecessary to enter into any examination of the privileges of the barons, which in no respect differ from those of the other component parts of the House of Peers. [PEERS OF THE REALM.]

The principal writers upon the subject of this article are, John Selden, in his work entitled 'Titles of Honour,' first published in 1614; Sir Henry Spelman, in his work entitled 'Archæologus, in modum Glossarii,' folio, 1626; Sir William Dugdale, in his 'Baronage of England,' 3 volumes, folio, 1675 and 1676; and in his 'Perfect Copy of all Summonses of the Nobility to the Great Councils and Parliament of this realm, from the 49th of Henry II. until these present times,' folio, 1685; 'Proceedings, Precedents, and Arguments on Claims and Controversies concerning Baronies by Writ, and other Honours,' by Arthur Collins, Esq.,' folio, 1734; 'A Treatise on the Origin and Nature of Dignities or Titles of Honour,' by William Cruise, 8vo., 2nd edit., 1823; 'Report on the Proceedings on the Claim to the Barony of Lisle, in the House of Lords,' by Sir N. H. Nicolas, 8vo., 1829. But the most complete information on this subject is contained in the printed 'Report from the Lords' Committees, appointed to search the Journals of the House, and Rolls of Parliament, and other Records and Documents, for all matters touching the Dignity of a Peer of the Realm.'

The word Barony is used in the preceding article only in its sense of a dignity inherent in a person: but the ancient law-writers speak of persons holding lands by barony, which means by the service of attending the king in his courts as barons. The research of the Lords' Committees has not enabled them to trace out any specific distinction between what is called a tenure by a barony and a tenure by military and other services incident to a tenancy in chief. The Hiltons in the north, who held by barony, have been frequently called the Barons of Hilton, though they had never, as far as is known, summons to parliament, or enjoyed any of the privileges which belong to a peer of the realm. Burford in Shropshire is also called a barony, and its former lords, the Cornwalls, who were an illegitimate branch of the royal house of England, were called, in instruments of authority, barons of Burford, but had never summons to parliament nor privileges of peerage. Barony is also sometimes, but rarely, used in England for the lands which form the tenancy of a baron, and especially when the baron has any kind of territorial addition to his name taken from the place, and is not summoned merely by his Christian and surname. This seems, however, to be done rather in common parlance than as if it were one of the established local designations of the country. The head of a barony (*caput baroniæ*) is, however, an acknowledged and well-defined term. It designates the castle or chief house of the baron, the place in which his courts were held, where the services of his tenants were rendered, and where, in fact, he resided. The castles of England were heads of baronies, and there was this peculiarity respecting them,—that they could not be put in dower, and that if it happened that the lands were to be partitioned among co-heiresses, the head of the barony was not to be dismembered, but to pass entire to some one of the sisters.

Barony is used in Ireland for a subdivision of the counties; they reckon 252 of the districts called baronies. Barony here is equivalent to what is meant by hundred or wapentake in England.

It remains to notice three peculiar uses of the word Baron:—

1. The chief citizens of London, York, and of some other places in which the citizens possess peculiar franchises, are called in early charters not unfrequently by the name of "the barons" of the place. This may arise either from the circumstance of the persons only being intended who were the chief men of the place; or that they were, in fact, barons, homagers of the king, bound to certain suit and service to the king, as it is known the citizens of London were and still are.

2. The Barons of the Cinque Ports are so called, probably for the same reasons that the citizens of London and of other privileged places are so called. The Cinque Ports, which were Hastings, Dover, Hythe, Romney, and Sandwich (to which afterwards Rye and Winchilsea were added), being ports opposite to France, were regarded by the earlier kings as places of great importance, and were consequently put under a peculiar governance, and endowed with peculiar privileges. The freemen of these ports were barons of the king, and they had the service imposed upon them of bearing the canopy over the head of the king on the day of his coronation. Here was the feudal service which marked them as persons falling within the limits of the king's barons. Those sent of themselves to parliament, though sitting in the lower house, might be expected to retain their appellation of barons.

3. The Barons of the Exchequer. The four judges in that court are so called, and one of them the Chief Baron. The court was instituted immediately after the Conquest, and it is probable that the judges were so denominated from the beginning. They are called barons in the earliest Exchequer record, namely, the Pipe Roll of 31 Henry I. It may here mean no more than the *men*, that is, the chief men, of the Exchequer. For their functions and duties see EXCHEQUER.

BA'RONAGE. This term is used, not so much to describe the collective body of the barons in the restricted sense which now belongs to the word as siguifying a component part of the hereditary nobility of England, but the whole of that nobility taken collectively, without regard to the distinction of dukes, marquesses, earls, viscounts, and barons, all of whom form what is now sometimes called the baronage.

In this sense the term is used in the title of one of the most important works in the whole range of English historical literature, for the sake of giving a short notice of which, we have introduced an article under this word. We allude to the 'Baronage of England,' by Sir William Dugdale, who was the Norroy King at Arms, and one of the last survivors of one of those eminent antiquarian scholars who, in the seventeenth century, raised so high the reputation of England for that particular species of learning.

Sir William Dugdale was the author of many other works, but his history of the baronage of England is the one to which reference is more frequently made; and there is this peculiarity belonging to his labours, that the 'Baronage' is quoted by all subsequent writers as a book of the highest authority; and it has, in fact, proved a great reservoir of information concerning the families who, from the beginning, have formed the baronage of England, from which all later writers have drawn freely.

The first volume was published in 1675; the second and third, which form together a volume not so large as the first, in 1676. The work professes to contain an account of all the families who had been at any period barons by tenure, barons by writ of summons, or barons by patent, together with all other families who had enjoyed titles of higher dignity, beginning with the earl of the Saxon times.

But Sir William Dugdale has collected from the chronicles, from the chartularies of religious houses, with which he became acquainted while preparing his great work on the history of the monasteries, from the rolls of parliament, in his time only to be perused in manuscript, and from the public records, which he could consult only in the public repositories, or in the extracts made from them by his fellow-labourers in historical research, and finally from the wills in the various ecclesiastical offices throughout the kingdom, the particulars of the lives of the most eminent men of our nation.

Not the least merit of the work is the careful reference to authorities. One passage in the preface to the Baronage contains a striking truth: "As the historical discourse will afford at a distance some, though but dim, prospect of the magnificence and grandeur wherein the most ancient and noble families of England did heretofore live, so will it briefly manifest how short, uncertain, and transient earthly greatness is; for of no less than two hundred and seventy in number, touching which this first volume doth take notice, there will hardly be found above eight which do to this day continue; and of those not any whose estates, compared with what their ancestors enjoyed, are not a little diminished; nor of that number, I mean two hundred and seventy, above twenty-four who are by any younger male branch descended from them, for aught I can discover."

BARONET, an English name of dignity, which in its etymology imports a Little Baron. But we must not confound it with the Lesser Baron of the middle ages [BARON], with which the rank of baronet has nothing in common; nor again with the banneret of those ages [BANNERET]; though it does appear that in some printed books, and even in the contemporary manuscripts, the state and dignity of a banneret is sometimes called the state and dignity of a baronet, by a mere error, as Selden promptly asserts ('Titles of Honour,' p. 354), of the scribe.

The origin of this rank and order of persons is quite independent of any previous rank or order of English society. It originated with King James I., who, being in want of money for the benefit of the province of Ulster in Ireland, hit upon the expedient of creating this new dignity, and required of all who received it the contribution of a sum of money, as much as would support thirty infantry for three years, which was estimated at 1095*l.*, to be expended in settling and improving the province of Ulster.

The principle of this new dignity was to give rank, precedence, and title without privilege. He who was made a baronet still remained a commoner. He acquired no new exemption or right to take his seat in any assembly in which he might not before have been seated. What he did acquire we can best collect from the terms of the patent which the king granted to all who accepted the honour, to them and the heirs male of their bodies for ever:—1. Precedence in all commissions, writs, companies, &c., before all knights, including knights of the Bath and bannerets, except such knights bannerets as were made in the field, the king being present; 2. Precedence for the wives of the baronet to follow the precedence granted to the husband; 3. Precedence to the daughters and younger sons of the baronet before the daughters and younger sons of any other person of whom the baronet himself took precedence; 4. The style and addition of Baronet to be written at the end of his name, with the prefix of Sir; 5. The wife of the baronet to be styled Lady, Madam, or Dame. It was stipulated on the part of the king, that the number of baronets should never exceed two hundred; and that, when the number was diminished by the natural process of extinction of families, there should be no new creations to supply the places of those extinct, but that the number should go on decreasing. Further, the king bound himself not to create any new order which should lie between the baron and the baronet.

Another distinction was soon after granted to them. A question arose respecting precedency between the newly-created baronets and the younger sons of viscounts and barons, which the king disposed of by his own authority, in favour of the latter; and in the same instrument in which he declared the royal pleasure in this point, he directed that the baronets might bear, either on a canton or in an escutcheon on their shield of arms, the arms of Ulster, which, symbolical it seems of the lawless character of the inhabitants of that province, as is set forth in the preamble of the baronet's patent, was a bloody hand, or, in the language of heraldry, a hand gules in a field argent. And further, the king "to ampliate his favour, this dignity being of his Majesty's own creation, and the work of his hands," did grant that every baronet, when he had attained the age of twenty-

one years, might claim from the king the honour of knighthood; that in armies they should have place near about the royal standard; and lastly, that in their funeral pomp they should have two assistants of the body, a principal mourner, and four assistants to him, being a mean betwixt a baron and a knight.

Such was the original institution of the order. To carry the king's intentions into effect, and especially to secure the payment of the money, commissioners were appointed to receive proffers for admission into the order. The instructions given to them throw further light on the original constitution of this body. They were to treat with none but such as were men of quality, state of living and good reputation worthy of the same, and they were to be descended of at least a grandfather by the father's side that bore arms; they were to be also persons possessed of a clear yearly revenue of 1000*l.*; and to avoid the envy and slander, as if they were men who had purchased the honour, the commissioners were to require an oath of them that they had not directly or indirectly given any sum of money for the attaining the degree and pre-eminence, except that which was necessary for the maintenance of the appointed number of soldiers.

The earliest patents bear date on May 22, 1611, on which day Sir Nicholas Bacon, of Redgrave, in Suffolk, knight, was admitted the first of the new order; and with him seventeen other knights and gentlemen of the first quality beneath the peerage. On the 29th of June following, fifty-four other patents were tested, and four more in September. The doubt respecting the precedence, and certain scruples which arose respecting this exercise of the royal prerogative, seemed to have occasioned a relaxation in the issue of patents, for no more were issued till the 25th of November, 1612, when fifteen other gentlemen were introduced into the order, making in the whole ninety-one. At this number they remained for some years; and it was not till 1622, a little before the death of King James, that the number of two hundred was completed.

In its more essential points, this order has undergone no modifications since its establishment. But the following alterations have taken place:—1. There has been no adherence to the number two hundred, which by the original compact was to be the limit of the number of patents issued. Even the founder himself did not adhere to this part of the contract, for at his death two hundred and five patents had been issued. The excuse was that several of the baronets had been advanced to higher dignities, and that thus vacancies were created, which the king was at liberty to fill. But his successor, King Charles I., issued patents at his pleasure; and the number issued before his death amounted to four hundred and fifty-eight. Later kings have not thought themselves bound by this clause of the original compact; and the number of members of this order is now understood to have no other limit than the will of the king. 2. In the time of King Charles II. the custom was to remit the payment of the money for the support of the soldiers; and a warrant for this remission is now always understood to accompany the grant of a patent of baronetcy. 3. The rule of requiring proof of coat-armour for three descents has in numerous instances not been insisted on. But with these variations the order has remained unchanged.

Various works have been published containing accounts of the families of England who belong to this order. The first of these was published in 1720, entitled 'The Baronetage of England,' the author of which was Arthur Collins, whose similar work on the 'Peerage of England' is held in high estimation. It was his intention to give an account of all the families who had ever possessed this distinction, whether then existing or extinct. Two volumes were published, containing the first 152 families; but the work was not continued. In 1727 appeared another 'Baronetage,' in three volumes, containing valuable accounts of the families of all baronets then existing. A third 'Baronetage,' usually called Wotton's, appeared in 1741, in five large volumes, 8vo. This is indisputably the most carefully compiled, the fullest, and the best work of the kind. Another appeared in 1775, in three volumes, 8vo.;

and about the beginning of the present century appeared Mr. Betham's account of the families of the then existing baronets, in five volumes, 4to.

As King James I. established the order of English baronets for the encouragement of the planting and settling the province of Ulster, so he designed to establish an order of baronets in Scotland for the encouragement of the planting and settling of Nova Scotia. He died however before any proceedings had been taken. His successor adopted the scheme, and in 1625 granted certain tracts of land in Nova Scotia to various persons, and with them the rank, style, and title of baronets of that province, with precedency analogous to the precedency given to the baronets of England. Some additional privileges were given them; as that the eldest son of a baronet of Nova Scotia, during the lifetime of his father, might claim the honour of knighthood; and that the baronet might wear a ribbon and medal, with badge and insignia of the order. The addition to the coat-armour of the baronet was the arms of the province of Nova Scotia.

It was proposed that the number should be limited to 150. The first was Sir Robert Gordon of Gordonstown. There were frequent creations of this dignity till the union with Scotland in 1707, when the creations ceased.

Baronets of Ireland were instituted by King James I. in 1620, for the same purpose with the baronets of England. The money was paid into the Irish Exchequer. The first person who received the dignity was either Sir Dominick Sarsfield, the Chief Justice of the Common Pleas in Ireland, or Sir Francis Blundell, the Secretary of State.

BARRISTER. The etymology of this word has been variously given by different authors, and it would be unprofitable to enumerate the fanciful derivations which have been assigned to it. In French the word *barreau*, which signifies a bar of wood or iron, is also used to signify "a place in the audience where the advocates plead, and which is closed to prevent the press of people." (Richelet, *Diction.*) From the word *bar* then it is obvious that such a term as barrister may be formed. But in England it is said that the term barrister arose from the arrangement of the halls of the different Inns of Court, which, for several centuries, have composed in England a kind of university for the education of advocates. [INNS OF COURT.] The benchers and readers, being the superiors of each house, occupied on public occasions of assembly the upper end of the hall, which was raised on a *dais*, and separated from the rest of the building by a bar. The next in degree were the *utter* barristers, who, after they had attained a certain standing, were called from the body of the hall to the bar (*i. e.* to the first place outside the bar), for the purpose of taking a principal part in the mootings or exercises of the house; and hence they probably derived the name of *utter* or outer barristers. The other members of the Inn, consisting of students of the law under the degree of utter barristers, took their places nearer to the centre of the hall and farther from the bar, and from this manner of distribution appear to have been called *inner* barristers. The distinction between utter and inner barristers is at the present day wholly abolished, the former being called barristers generally, and the latter falling under the denomination of students.

The degree of utter barrister, though it gave rank and precedence in the Inn of Court, and placed the individual in a class from which advocates were always taken, did not originally communicate any authority to plead in courts of justice. In the old reports of the proceedings of courts, the term is wholly unknown; serjeants and apprentices at law, who are supposed by Dugdale to be the same persons,* being the only pleaders or advocates mentioned in the earlier year-books.

* It might be shown, by many instances, that serjeants are comprehended under the term *apprentices*. Thus in Plowden's 'Reports,' vol. i. p. 213, the great case of the Duchy of Lancaster is said to have been argued, among others, by "Carrel, apprentice, and Plowden, apprentice." This argument took place in the fourth year of the reign of Elizabeth; and it appears from the 'Chronica Juridicialia,' p. 165, that both Carrel and Plowden had been, before that time, created serjeants. The Latin designation of serjeant in legal documents is *serviens ad legem*.

In the time of Stow, however, who wrote in the latter part of Elizabeth's reign, it is clear that utter barristers were entitled to act as advocates, as he expressly says that persons called to that degree are "so enabled to be common councellors, and to practice the law both in their chambers and at the barres." The exact course of legal education pursued at the Inns of Court before the Commonwealth is extremely uncertain, but it appears to have consisted almost entirely of the exercises called *readings* and *mootings*, which have been described by several old writers. The *readings* in the superior or larger houses were thus conducted:—The benchers annually chose from their own body two readers, whose duty it was to read openly to the society in their public hall, at least twice in the year. On these occasions, which were observed with great solemnity, the reader selected some statute which he made the subject of formal examination and discussion. He first recited the doubts and questions which had arisen, or which might by possibility arise, upon the several clauses of the statute, and then briefly declared his own judgment upon them. The questions thus stated were then debated by the utter barristers present with the reader, after which the judges and serjeants, several of whom were usually present, pronounced their opinions separately upon the points which had been raised. Readings of this kind were often published, and it is to this practice of the Inns of Court that we are indebted for some of the most profound juridical arguments in our language, such as Callis's reading on the Statute of Sewers, and Lord Bacon's on the Statute of Uses.

The process of *mooting* in the Inns of Court differed considerably from *reading*, though the general object of both was the same. On these occasions, the reader of the Inn for the time being, with two or more benchers, presided in the open hall. On each side of the bench table were two inner barristers, who declared in law French some kind of action, previously devised by them, and which always contained some nice and doubtful points of law, the one stating the case for the plaintiff, and the other the case for the defendant. The points of law arising in this fictitious case were then argued by two utter barristers, after which the reader and the benchers closed the proceedings by declaring their opinions separately. These exercises appear to have lost much of their utility in the time of Lord Coke, who, in the 'First Institute,' p. 280 *a*, praises the ancient readings, but says that the modern performances were of no authority. Roger North says that Lord Keeper Guilford was one of the last persons who read in the Temple according to the ancient spirit of the institution. It is, however, beyond all doubt, that, as far back as we have any distinct memorials, all advocates must have passed through the mode of preparation adopted in the Inns of Court.

The serjeants, who, before the allowance of utter barristers to plead in courts, appear to have been the only advocates, were called from the Inns of Court by the king's writ, which was only issued at the discretion of the crown, and generally as a matter of favour; and indeed this continues to be the case at the present day. In process of time it became convenient and necessary to enable utter barristers to practise; but some time after they began to act as advocates in the superior courts, the terms upon which they were called to the bar, and allowed to plead, were prescribed by the Privy Council. Thus an order of council, regulating the proceedings of all the Inns of Court in this respect, dated Easter Term, 1574, and signed by Sir Nicholas Bacon as lord keeper, and several lords of council, directs that "none be called to the utter bar but by the ordinary council of the House (*i.e.* the Inn), in their general ordinary councils in term time; also, that none shall be utter barristers without having performed a certain number of mootings; also, that none shall be admitted to plead in any of the courts at Westminster, or to sign pleadings, unless he be a reader, bencher, or five years' utter barrister, and continuing that time in exercises of learning; also, that none shall plead before justices of assize unless allowed in the courts of Westminster, or allowed by the justices of assize." (See Dugdale's *Origines Judiciales.*) This appears to be

the last instance of the immediate interference of the Privy Council with the arrangements of the Inns of Court respecting calls to the bar. In the reigns of James I. and Charles I., the judges and benchers of the several Inns conjointly made orders on this subject, and, since the Commonwealth, the authority to call persons to the degree of barrister-at-law has been tacitly relinquished to the benchers of the different societies, and is now considered to be delegated to them from the judges of the superior courts. In conformity with this view of the subject, the practice has been, in the several cases of a rejection of applications to be called to the bar which have lately happened, to appeal to the judges, who either confirm or reverse the decision of the benchers.

Previously to a general arrangement made by all the Inns of Court in 1762, the qualifications required for being called to the bar varied extremely, and no uniform rule was observed at the different houses. In the first year of the reign of James I. it was solemnly ordered by a regulation signed by Sir Edward Coke, Sir Francis Bacon, and other distinguished names, that no person should be admitted into any of the Inns of Court who was not a gentleman by descent. Other regulations were occasionally made, as to the length of standing required, and the number of persons to be called at each time, which were often inconsistent with each other. The greatest inconvenience, however, arose from the absence of uniformity in the practice of the different Inns, as to the qualifications which they respectively required. To remedy this evil, it was determined, in 1762, by the concurrence of all the Inns of Court, to adopt a common set of rules for their guidance in this respect; and at the present day, the general rule as to qualification in all the Inns of Court is, that a person, in order to entitle himself to be called to the bar, must be twenty-one years of age, have kept twelve terms, and have been for five years, at the least, a member of the society. If he be a Master or Bachelor of Arts of either of the English universities, or of Trinity College, Dublin, it is sufficient if he has kept twelve terms and has been three years a member of the Inn by which he desires to be called to the bar. By an order made by the benchers of the Inner Temple, in Trinity Term, 1829, every person proposed for admission to that house must, previously to his admission, undergo an examination by two barristers appointed by the bench, who are required to certify whether the individual is proficient in "classical attainments and the general subjects of a liberal education." This regulation has not been adopted at any of the other three Inns of Court. The expense of being called to the bar amounts to between 80*l.* and 90*l.*, exclusive of the three years' commons and the admission fees. In order to qualify a person for the bar in Ireland, it is necessary that he should have kept eight terms at one of the four Inns of Court in London, and nine terms at the King's Inn in Dublin. [ADVOCATES, FACULTY OF; COUNSEL; INNS OF COURT.]

The following statement of the regulations now in force as to the admission of advocates in the ecclesiastical and admiralty courts of Doctors' Commons, and in the provincial court of York, and the present number of advocates in these courts, is taken from a Parliamentary Return (No. 282, sess. 1844). According to the present rules, a candidate for admission as an advocate is required to deliver in to the office of the vicar-general of the province of Canterbury a certificate of his having taken the degree of Doctor of Laws, signed by the registrar of the university to which he belongs. A petition, praying that in consideration of such qualification the candidate may be admitted an advocate, is then presented to the archbishop, who issues his fiat for the admission of the applicant, directed to his vicar-general, who thereupon causes a rescript or commission to be prepared, addressed to the official principal of the Arches Court of Canterbury, empowering and requiring him to admit the candidate an advocate of that court. This commission contains a proviso that the person to be admitted shall not practise for one whole year from the date of his admission. The candidate is admitted on one of the regular sessions of the Arches Court; the rescript of the archbishop

being first read, and the oaths of allegiance and supremacy with two other oaths being taken. This admission in the Arches Court qualifies the person for practising in any of the other ecclesiastical courts of Doctors' Commons. The present number of advocates is 24.

Advocates admitted in the Arches Court of Canterbury are admitted to be advocates of the High Court of Admiralty of England upon their alleging such their admission in the Arches Court. The present number of advocates is 24.

The advocates of the provincial courts at York must be barristers-at-law; and they are admitted as advocates of the Consistory Court there, with power to practise in all other the archbishop of York's courts, by virtue of his grace's fiat directed to his chancellor: the stamp-duty on their admission is 50*l.* But it is not required that they should be doctors of civil law, nor does the constitution of Archbishop Pickham, 9 Edw. I., 1221, apply to them. The number of advocates, as far back as any record shows, has been limited to four; but the present number is only two. The admitted advocates of the courts have exclusive right to practise therein, though in cases of weight and difficulty, counsel on the northern circuit are occasionally taken in to their assistance.

BARRISTER, in Scotland. [ADVOCATES, FACULTY OF.]

BARTER. When one commodity is exchanged directly for another, without the employment of any instrument of exchange which shall determine the value of the merchandise, the transaction is called Barter. All trade resolves itself into an exchange of commodities; but the commercial exchangers of one commodity for another effect their exchanges by a money-payment, determined by a market-value. This is a sale. Swift, in his attack upon Wood's halfpence, which he considered as destructive of the money-standard of value, says, "I see nothing left us but to *barter* our goods, like the wild Indians, with each other." The general evils of such a state are obvious; and they create dishonest attempts in one exchanger to cheat the other. The North American Indians obtain a few of the comforts and luxuries of civilized life, by exchanging skins for manufactured articles. The Indians meet the traders: each man divides his skins into lots, which have a relative value to each other, as that two otter skins are equal to one beaver. For one lot he wants a gun, or a looking-glass, or a blanket, or an axe. The trader has the articles to give the Indian in exchange. Twenty beaver-skins are given for a gun; the gun costs a pound in Birmingham; the beaver-skins are worth more than twenty times the amount in London. If the Indians were brought into more general contact with the exchangers of civilised life, they would regulate their exchanges by a money-standard, and would obtain a fairer value for their skins.

The term *barter* seems to have been derived from the languages of southern Europe: *baratar*, Spanish; *barattare*, Italian,—which signify to cheat as well as to barter: hence, also, our word Barratry. The want of a standard of value in all transactions of barter, gives occasion to that species of overreaching which prevails from an ignorance of the real principles of trade, by which all exchangers are benefited through an exchange. The examples of barter, however, without any reference to some standard of value, become more and more uncommon as the commercial intercourse of mankind advances. A skin of corn, or a stone vessel of corn, among some of the Indian tribes, is established as a standard of value; councils are held to determine the rate of exchange; and a beaver-skin is thus held to be worth so many more skins of corn than a blanket. This is an approach to a standard of value, which almost takes the transaction out of the condition of being a barter. In the trade carried on between Russia and China, the exchanges of merchandise are directly effected, but the comparative value of the merchandise is determined by a money-standard. This is clearly not barter. The Indian corn-measure of value is something like the animal measure which formerly existed in this country, when certain values being affixed to cattle and slaves, they became an instrument of exchange, under the

name of *living* money. Amongst the northern nations skins used to be a standard of value: the word *râha*, which signifies money in the Esthonian language, has not lost its primitive signification of skins amongst the Laplanders. When nations come to use any standard of value, whether skins, as in northern Europe, or dhourra (pounded millet, *Sorghum vulgare*), as in Nubia, or shells, as in parts of India, their transactions gradually lose the character of barter. If wages are paid in articles of consumption, as in some districts of England, the transaction is called *truck:—troc* is the French for barter. [TRUCK SYSTEM.]

The exchanges of a civilized people amongst themselves, or with other countries, are principally carried on by bills of exchange; the actual money-payment in a country by no means represents the amount of its commercial transactions. If any sudden convulsion arise which interrupts the confidence upon which credit is founded, bills of exchange cease to be negotiable, and exchangers demand money payments. The coin of a commercial country being insufficient to represent its transactions, barter would be the natural consequence if such a disastrous state of things were to continue. Thus, when Mr. Huskisson declared in 1825 that the panic of that year placed this country "within forty-eight hours of barter," he meant that the credit of the state would have been so reduced, that its notes would not have been received, or its coin, except for its intrinsic value as an article of exchange; and that the bills of individuals would have been in the same case. Barter, in this case, would be a backward movement towards uncivilization.

BASTARD. The conjectures of etymologists on the origin of this word are various and unsatisfactory. Its root has been sought in several languages:—the Greek, Saxon, German, Welsh, Icelandic, and Persian. For the grounds on which the pretensions of all these languages are respectively supported, we refer the curious to the glossaries of Ducange and Spelman, the more recent one of Boucher, and to the notes on the title Bastard in Dodd and Gwillim's edition of Bacon's Abridgment, vol. i., p. 746.

Among old English writers it is applied to a child not born in lawful wedlock; and as such he is technically distinguished from a *mulier* (*filius mulieratus*), who is the legitimate offspring of a *mulier* or married woman.

The civilians and canonists distinguish illegitimate children into four or five classes not recognised in the English law; it may, however, be worth while to remark, that the familiar term *natural*, applied by us to all children born out of wedlock, is in that classification confined to those only who are the offspring of unmarried parents, living in concubinage, and who labour under no legal impediment to intermarriage. Children of the last-mentioned class are, by the civil and canon law, capable of legitimation by the subsequent union of the parents, or by other acts which it is needless here to particularize. (Heineccius, *Syntag*, vol. i. p. 159; Ridley's *View*, &c., p. 350, ed. 1675; Godolphin's *Repertorium Canonicum*, chap. 35.)

The English very early adopted strict notions on the subject of legitimacy; and when the prelates of the 13th century were desirous of establishing in this country the rule of the canon law, by which bastard children are legitimated upon the subsequent intermarriage of their parents, the barons assembled at Merton (A.D. 1235) replied by the celebrated declaration, "that they would not consent to change the laws of England hitherto used and approved."

It has been observed that this sturdy repugnance to innovation was the more disinterested, inasmuch as the lax morality of those days must probably have made the proposition not altogether unpalatable to many to whom it was addressed. The opposition, therefore, seems to have been prompted by a jealousy of ecclesiastical influence, which was at that time ever watchful to extend the authority of the church by engrafting on our jurisprudence the principles of the canon law.

On another point our ancestors were less reasonable: for it was very early received for law, not only that the fact of birth after marriage was essential to legitimacy, but that it was conclusive of it.

Hence it was long a maxim that nothing but physical or natural impossibility, such as the continued absence of the husband beyond seas, &c., could prevent the child so born from being held legitimate, or justify an inquiry into the real paternity.

Their liberality in the case of posthumous children was also remarkable: for in the case of the Countess of Gloucester, in the reign of Edward II., a child born one year and seven months after the death of the father, was pronounced legitimate; a degree of indulgence only exceeded by the complaisance of Mr. Serjeant Rolfe, in the reign of Henry VI., who was of opinion that a widow might give birth to a child at the distance of seven years after her husband's decease, without wrong to her reputation. (Coke upon Littleton, 123 b. note by Mr. Hargrave; Rolle's *Abridgment*, "Bastard;" and Le Marchant's *Preface to the case of the Banbury Peerage.*)

The law now stands on a more reasonable footing, and the fact of birth during marriage, or within a competent time after the husband's death, is now held to be only a strong presumption of legitimacy, capable of being repelled by satisfactory evidence to the contrary.

Another curious position of doubtful authority is also found in our old text writers; namely, that where a widow marries again so soon after her husband's decease that a child born afterwards may reasonably be supposed to be the child of either husband, then the child, upon attaining to years of discretion, shall be at liberty to choose which of the two shall be accounted his father. When a man dies, and his wife alleges that she is with child, those who may be entitled to the property in case there is no child born, or in case the child who is born is illegitimate, that is, not the child of the husband, may have a writ De Ventre Inspiciendo, the object of which is to ascertain if the woman is pregnant. [VENTRE INSPICIENDO, DE; WRIT.]

The legal incapacities under which an illegitimate child labours by the law of England are few, and are chiefly confined to the cases of inheritance and succession. He is regarded for most purposes as the son of nobody, and is therefore heir-at-law to none of his reputed ancestors. He is entitled to no distributive share of the personal property of his parents, if they die intestate; and even under a will he can only take where he is distinctly pointed out in it as an object of the testator's bounty, and not under the general description of 'son,' 'daughter,' or 'child,' by which legitimate children alone are presumed to be designated. He can also take under a will before his birth, if he is particularly described. He may, however, acquire property himself, and thus become the founder of a fresh inheritance, though none of his lineal descendants can claim through him the property of his reputed relations. If he dies without wife, issue, or will, his lands and goods escheat to the crown, or lord of the fee. In the former event it is usual for the crown to resign its claim to the greater part of the property on the petition of some of his nearest *quasi* kindred. There is a clause (§ 11) in the new Savings Banks Act (7 & 8 Vict. c. 83) which allows the sum invested by a depositor, being illegitimate and dying intestate, to be paid to such person or persons as would be entitled to the same provided the depositor had been legitimate.

Strictly speaking, a bastard has no surname until he has acquired one by reputation, and in the meantime he is properly called by that of his mother. The mother of an illegitimate child is entitled to its custody, although if such child, within the age of nurture, be fraudulently taken from the mother by the putative father, the order of the justices to restore it to its mother is not sufficient. The remedy is by *habeas corpus* in the Court of King's Bench. Lord Stowell was of opinion that the father of an illegitimate child "had very little (if any) parental authority." (Phillimore's Burns, i. pp. 130—1.) Before the passing of 18 Eliz. c. 3, it is considered that the custody of an illegitimate child was in the hands of the parish, and after this enactment it was a question whether the father could take the child out of the possession of the parish.

The first English statute which provides for the maintenance of illegitimate

children, is the 18th of Elizabeth, cap. 3, which conferred on justices of the peace the power of requiring from one or both of the parents a weekly or other payment for their support, and in default thereof, of committing them to jail until they found surety to make such payment, or else to appear at the next quarter-sessions to abide the order of the justices. The 7th James I. c. 4, punished a woman having a bastard chargeable to the parish, with one year's imprisonment and labour in the house of correction; and for a second offence she was to be committed to the house of correction until she could find sureties for her good behaviour. The 30th of Geo. III. c. 51, repealed this power, and enabled the justices to sentence the woman to imprisonment for any period not less than six weeks nor more than a year. As bastards were frequently left to the charge of the parish by the parents running away, an act was passed (13 & 14 Car. II. c. 11) which enabled the overseers to indemnify themselves at the cost of the putative father. By 6th Geo. II. c. 31, and 49th Geo. III. c. 68 (which repealed the former act and then re-enacted it with some variations), on a single woman declaring herself to be pregnant, and charging any person with being the father, a justice's warrant could be obtained for his apprehension, on the application of the overseer or any substantial householder, and such person might be committed to jail, unless he agreed to indemnify the parish. The justice had no power to examine into the merits of the case, but was compelled to act upon the woman's oath, and to commit the putative father if the necessary surety was not provided. The man had the option of marrying the woman, contributing to the maintenance of the child, or of going to jail. Under the act of Elizabeth and later acts of parliament, down to the passing of the Poor Law Amendment Act in 1834, the usual practice was for the mother to apply for relief to the parish officers, by whom she was carried before the magistrates to be interrogated respecting the paternity of the child. An order of filiation was then made, and the reputed father was ordered to contribute a weekly payment, or was bound to indemnify the parish against the future expenses of maintenance. "In form the proceeding was against the putative father for the indemnification of the parish; but in substance it was a proceeding of the mother against the putative father, the benefit of which accrued to her, and to which the parish was little more than a nominal party, except when it made good the father's default. It was in truth an action of the mother against the putative father, for a contribution towards the expenses of their common child, in which, by a fiction of law, the parish was plaintiff." (*On the law concerning the maintenance of bastards, by the Poor Law Commissioners*, Parl. paper, No. 31, Session 1844.) In this state of things, the Commissioners of Poor Law Inquiry (1834) recommended that the mother of a bastard should be rendered liable for its maintenance, but that she should be exempted from punishment under 30th Geo. III. c. 51, and that all enactments charging the putative father should be repealed. The Bill for amending the Poor Law, brought in in 1834, contained clauses for giving effect to this recommendation; but a clause was introduced into the Bill in the Commons authorising the making of orders of affiliation in petty sessions. In the House of Lords the Bill was amended in the form in which it ultimately passed (4th & 5th William IV. c. 76, §§ 72—76). The law now was, that the parish might still apply for an order upon the putative father, but this was to be done at the quarter-sessions, instead of the petty sessions; and corroborative evidence was required; and other difficulties and onerous conditions were thrown in the way, which increased the trouble and expense of all parties, and showed that "the object of the Legislature was to impede rather than encourage the applications to quarter-sessions, and by so doing to conform partially to the recommendation of the Commissioners of Inquiry, that the remedy against the supposed father should be abolished altogether." (*Report of Poor Law Commissioners to Secretary of State*, May, 1835.) The number of bastards affiliated in England and

Wales, in the years ending respectively 25th of March, 1835 and 1836, was 12,381 and 9,686. The practice of affiliation was therefore rapidly diminishing under the Poor Law Amendment Act, but the obstacles which it threw in the way occasioned great complaints. It was alleged that the putative father was not punished, while the consequences fell solely upon the woman. In 1839, therefore, an act was passed (2 & 3 Vict. c. 85) which transferred the power of making orders in bastardy from the quarter sessions to any two justices in petty sessions, and facilitated instead of discouraged affiliations. The controlling power of the Poor Law Commissioners was here of use in preventing evils which might otherwise have attended a change from one principle to another of an opposite kind. Payments by putative fathers under orders in bastardy have, under 2 & 3 Vict., "been limited to the cost of the relief actually given; they have been made bonâ fide to the parish, and therefore the parish has not been a purely formal party to the proceeding, and a mere skreen to the woman." (*Report of Poor Law Commissioners*, Jan. 31st, 1844.) The law respecting bastardy has been still more recently the subject of legislation, and by 7 & 8 Vict. c. 101, the principle of charging the putative father is totally different from that of any previous law on the subject. "Formerly the remedy was intended exclusively for the parish: now the mother alone can obtain it. . . . Formerly the chargeability of the child, either in fact or in prospect, was the ground of the remedy: now the actual or probable chargeability of the child is made wholly immaterial." (*Official Circular*, No. 39, Oct. 1, 1844.) The officers of all parishes and unions are deprived of the power of applying for orders of affiliation with regard to illegitimate children born before or after the passing of the act, and the mother alone is entitled to apply for such order; but in case of the death or incapacity of the mother, the guardians (or if there are no guardians, the overseers) may enforce an order, although they cannot apply for one, and payments are to be made to some person appointed by the justices to have the custody of the child, and not to the parish officers; and such person is to receive the child on the condition that it is not to be chargeable. Parish officers are guilty of misdemeanour for endeavouring to promote the marriage of the mother of a bastard by threats or promises respecting any application to be made for maintenance. The mother of a bastard may summon the putative father before the petty sessions within twelve months after the birth of the child, or at any time on proof of money having been paid to her in respect of such child. The justices may then make an order on the putative father for maintenance of the child and other costs, and enforce the same by distress and commitment; but not more than thirteen weeks' arrears can be claimed. The sum paid for maintenance is to be paid to the mother, and if she neglect or desert her offspring she may be punished under the Vagrant Act (5 Geo. IV. c. 83). The liability of the mother, while unmarried or a widow, continues until the child is sixteen. Any person having the care of a bastard child under an order of maintenance, who maltreats it, or misapplies moneys paid by the putative father for its support, is liable to a penalty of 10*l.* on conviction before two justices. The putative father may appeal to the quarter-sessions, as under the old law. All orders for the maintenance of a bastard cease after it has attained the age of thirteen, or on the marriage of the mother. Existing orders are to continue, but those made before August 14, 1834, are to cease on the 1st of January, 1849.

According to the census of 1831 the proportion of illegitimate to legitimate births was, in the year 1830, as 1 to 20 in England, and the proportion in Wales was as 1 to 13. But the more accurate returns obtained under 6 & 7 Wm. IV. c. 86, for the registration of births, marriages, and deaths, show the proportion of illegitimate births to be greater than one in twenty. Out of 248,554 registered births in England, 15,839 were illegitimate, or one in sixteen. (*Fifth Report of Registrar-General*, p. 10.) We may probably assume that the illegitimate births in England and Wales are somewhat higher

than one in sixteen, and the number of such births in the year ending 30th of June, 1841, would therefore be about 33,000, and as the females aged from 16 to 45 were about 3,500,000, the proportion of those who gave birth to an illegitimate child in that year was about one in 109. The Commissioners for taking the census of Ireland in 1841, do not give any statement respecting illegitimate births, but it is believed that they are fewer than perhaps in any other country. In Paris in 1842, out of 28,218 births, 10,286, or one in 2·7, were illegitimate, of whom 4621 were born at the hospitals, and 5665 at home; and of the illegitimate children 8231 out of 10,286 were not recognised by either parent. The number of illegitimate children born in France in 1841 was 70,938, and of children born in wedlock there were 906,091. The proportion of illegitimate births was therefore as 1 to 12·929, or nearly 10 in 130. (*Annuaire du Bureau des Longitudes*, 1844.) In 1834 the number of illegitimate births in Prussia was 40,656 out of 555,282 births, or 1 in 13·6. From 1820 to 1834 the proportion was 1 in 14·4. (*Trans. of London Stat. Soc.* vol. i. part 1.) In 1837 the number of illegitimate children born in Prussia was 39,501, and as the number of females from 16 to 45 was 2,983,146, 1 in every 75 of this number had in that year given birth to an illegitimate child. (Laing's *Notes of a Traveller in Prussia, &c.*, p. 167.) The same writer, in his 'Journal of a Residence in Norway,' states, p. 151, that the proportion of legitimate to illegitimate children in that country is about 1 in 5; and he gives an instance of a country parish where the proportion from 1826 to 1830 was 1 in 3·2. Mr. Laing states in his 'Tour in Sweden,' that in 1838 there were born in Stockholm 2714 children, and of this number 1577 were legitimate and 1137 were illegitimate, the proportion being 1 illegitimate to 1½ legitimate, that is, for every 15 legitimate there were 10 illegitimate. In the town population of Sweden, exclusive of Stockholm (and the towns are generally of very small size, without commerce or manufactures), the proportion was about 1 illegitimate to 4 legitimate births.

The following statements are taken from Turnbull's *Austria*, vol. ii. p. 200, not as illustrations of national morals, in which light the author considers them fallacious, but "as bearing on certain great questions of public good." In Vienna, in 1834, the proportion of illegitimate to legitimate births was as 10 to 12; at Gratz as 10 to 6; at Milan as 10 to 28; at Venice as 10 to 28. In Lower Austria, in the same year, the proportion of illegitimate births was 1 in 4; in Upper Austria 1 in 5; in Styria 1 in 3; in the Tyrol 1 in 17; in Bohemia 1 in 16; in Moravia and Silesia 1 in 7; in Gallicia 1 in 12; in Dalmatia 1 in 2; in Lombardy 1 in 25; in the Venetian Provinces 1 in 3; in Transylvania 1 in 36; in the whole Empire, exclusive of Hungary, 1 in 9.

The repute in which spurious children have been held has varied in different ages and countries. In some they have been subjected to a degree of opprobrium which was inconsistent with justice; in others the distinction between base and legitimate birth appears to have been but faintly recognised, and the child of unlicensed love has avowed his origin with an indifference which argued neither a sense of shame nor a feeling of inferiority. When the Conqueror commenced his missive to the Earl of Bretagne by the words, "I, William, surnamed the Bastard," he can have felt no desire to conceal the obliquity of his descent, and little fear that his title would be defeated by it. Accordingly, history presents us with many instances in which the succession not only to property, but to kingdoms, has been successfully claimed by the spurious issue of the ancestor. It is, however, very improbable that in any state of society where the institution of marriage has prevailed, children born in concubinage and in lawful wedlock should ever have been regarded by the law with exactly equal favour. (See Ducange, *Glossary*, tit. "Bastardus.")

Those who may be curious to learn what fanciful writers have urged in proof of the superior mental and physical endowments of illegitimate issue, may refer to Burton's *Anatomy of Melancholy*, vol.

ii. p. 16 (ed. 1821); Pasquier, *Recherches*, chap. "De quelques mémorables bâtards;" and Pontus Heuterus, *De Liberâ Hominis Nativitate.* See also Shakspere's *Lear*, act i. scene 2; and the observations of Dr. Elliotson in his edition of Blumenbach's *Physiology*, in notes to chap. 40.

In *Scotland* the law of Bastardy differs considerably from the English, chiefly in consequence of its having adopted much of the Roman and pontifical doctrines of marriage and legitimacy.

Thus, in England, in the case of a divorce in the spiritual court, "*à vinculo matrimonii*," the issue born during the coverture are bastards. But agreeably to the judgment of the canons, 'Decret. Greg.,' lib. iv. tit. 17, c. 14, the Scottish writers, proceeding on the *bona fides* of the parties, incline to a different opinion, *in favorem prolis;* and it will be recollected that when Secretary Lethington proposed to Mary Queen of Scots a divorce from Darnley, James Earl of Bothwell, to quiet her fears for her son, "allegit the exampill of himself, that he ceissit not to succeid to his father's heritage, without any difficultie, albeit thair was divorce betwixt him and his mother." The point has not, however, received a judicial determination, and cannot therefore be regarded as settled, though of the tendency of the law there can be little doubt. Even in the case of a marriage between a party divorced for adultery and the adulterer, which by stat. 1600, c. 20, following the civil law, is declared "null and unlawful in itself, and the succession to be gotten of sik unlawful conjunctions unliable to succeid as heires to their said parents;" the issue are not accounted bastards, "though," as Stair adds, b. iii. tit. 3, § 42, "they may be debarred from succession." Of course, the issue of every legal marriage are lawful, and therefore the children not only of marriages regularly solemnized, but also of every union acknowledged by the law as a marriage, are alike legitimate. The same may be said of children legitimated by the subsequent intermarriage of their parents; but the situation of these is, as we shall immediately see, somewhat anomalous.

The Scottish law has adapted two species of legitimation, which, in the language of the civil law, they call legitimation *per subsequens matrimonium*, and legitimation *per rescriptum principis.*

The former of these was introduced into the Roman jurisprudence by a constitution of the Emperor Constantine the Great, but did not become a permanent method of legitimation till the time of Justinian. It was afterwards taken up by the Roman pontiffs and disseminated by the ecclesiastics throughout Europe. At the parliament of Merton, however, the doctrine met with a repulse from the barons of England, as already mentioned.

Though the English law was preserved inviolate, yet the ecclesiastics did not cease to press the point among the people, and to this day we may remark traces of the custom in some of the remoter districts of the island. The doctrine was certainly no part of the ancient common law of Scotland any more than of England; but it is now settled law there, and its rise and establishment are at once accounted for, when we consider the former strong or rather paramount influence of the canon and civil laws in that country. The principle on which the doctrine rests is the fiction of law that the parents were married at their child's birth. If, therefore, the parents could not have then legally married, or if a mid impediment has intervened between the birth and the intermarriage, the fiction is excluded, and previous issue will not be legitimated by marriage. Further, it is held that if the child was born, or if the intermarriage took place, in a country which does not acknowledge the doctrine of legitimation by subsequent marriage, the child will remain a bastard; the character of bastardy being in the one case indelible, and the marriage in the other ineffectual to create legitimacy. On the other hand, a child legitimated *per subsequens matrimonium* is entitled to all the rights and privileges of lawful issue, and will, as respects inheritance and the like, take precedence of subsequent issue born in actual wedlock: yet in England the judges have held that a child born in Scotland before marriage, and legitimated in Scotland by subsequent marriage,

the parents also being domiciled there, though in point of fact the first-born son, and in status and condition, by comity, legitimate in England, will not succeed to land in England. (Doe dem. Birtwhistle *v.* Vardill, 5 Barn. and Cress. 438. The opinion of the judges was confirmed by the House of Lords, July, 1840.)

Legitimation *per rescriptum principis* proceeds on a less abstract and more generally acknowledged principle than the preceding. Though therefore it is said to have been invented by Justinian, and copied by one of the popes of Rome, yet concessions in the nature of letters of legitimation are not peculiar to the Roman law. The form of these letters seems to have been borrowed by the Scots immediately out of the old French jurisprudence: their clauses are usually very ample, capacitating the grantee for all honours and offices whatsoever, and to do all acts in judgment or outwith, and, in short, imparting to him all the public rights of lawful children and natural born subjects, together with a cession of the crown's rights by reason of bastardy; but as the crown cannot affect the rights of third persons without their consent, letters of legitimation do not carry a right of inheritance to the prejudice of lawful issue.

As in the Mosaic law a bastard was debarred from the congregation, so according to the canons he is in strictness incapable of holy orders; and, indeed, it has been the policy of most nations to incapacitate bastards in divers ways, that if men will not be deterred from immorality by a sense of the injury accruing to themselves, they may by a consideration of the evils resulting to their offspring. But whatever may be the operation of those incapacities, they are felt by all to be wrongs inflicted on the innocent; and, as Justinian properly observed when he made legitimation *per subsequens matrimonium* a perpetual ordinance, "indigni non sunt qui alieno vitio laborant." Accordingly this doctrine is now obsolete in England, and nearly so in Scotland. By 6 Wm. IV. c. 22, the only remaining incapacity in Scotland—the want of power to make a testament in the particular case of the bastard having no lawful issue—was done away with; the preamble of the act reciting that it is just, humane, and expedient that bastards or natural children in Scotland shall have the power of disposing of their moveable estates by testament. Letters of legitimation were formerly necessary in all cases; but it was held that, as the crown's right of succession was excluded by the existence of issue, a bastard who had lawful issue might dispose of his goods by testament in any way he thought fit. Since the passing of 6 Wm. IV. c. 22, there is now no distinction between a bastard and another man; and so he may dispose of his heritage *in liege poustie*, and of his moveables *intervivos*, and by testament, and he may succeed to any estate, real or personal, by special destination. To his lawful children, also, he may appoint testamentary guardians; and his widow has her provisions like other relicts. It is to be noted, however, that in the eye of the law a bastard is *nullius filius;* and being thus of kin to nobody, he cannot be heir-at-law to any one, neither can he have such heirs save his own lawful issue. Where a bastard dies leaving no heir, the crown, as *ultimus heres*, takes up his property, which, if it be land holden in capite, is at once consolidated with the superiority; but if it be holden of a subject, the crown appoints a donatary, who, to complete his title, must obtain decree of *declarator of bastardy*, a process in the nature of the English *writ of escheat*, and thereupon he is presented by the king to the superior as his vassal.

But though bastards are legally *nullius filii*, yet the law takes notice of their natural relationship to several purposes, and particularly to enforce the natural duties of their parents. These duties are comprised under the term *aliment*, which here, as in the civil law, comprehends both maintenance and education; including under this latter term, as Lord Stair says (b. i. tit. 5, sec. 6), "the breeding of them for some calling and employment according to their capacity and condition." These were at least the principles on which the courts proceeded in awarding aliment to children. In determining who is the father of a bastard, the Scots courts

again proceed on the principles of the civil law. In Scotland there must first be semiplenary evidence of the paternity, and then, when such circumstantial or other proof of that fact is adduced as will amount to *semiplena probatio* (equivalent to the "corroborative evidence" required in England), the mother is admitted to her oath in supplement. The whole aliment is not due from one parent but from both parents. This is the principle; and therefore in determining what shall be payable by the father, the ability of the mother to contribute is also considered. The absolute amount of aliment, however, is in the discretion of the court, as is likewise its duration. Where the parties are paupers, the bastard's settlement is not the father's but the mother's parish, and if that is unknown, the parish of its birth.

The mother of a bastard is entitled to its custody during its infancy; and it would seem that afterwards the father may take the rearing of the child into his own hand, and also, perhaps, nominate to it tutors and curators. This last power has been denied; if it does not exist, it ought to be now bestowed by act of parliament.

In *France* the condition of illegitimate children is determined by the Code Civil (tit. vii. caps. 1 & 2, §§ 312-342). A husband can disavow a child of his wife's on proof that during a period of from three hundred to one hundred and eighty days before its birth it was physically impossible, either from absence or accident, that he could have cohabited with his wife; but impotency cannot be alleged as a cause of disavowal; nor adultery on the part of the wife, unless the birth has been concealed from the husband, in which case the matter may be decided upon its merits. A child born before the one hundred and eightieth day after the marriage cannot be disavowed if it is proved that the husband knew of the pregnancy before the marriage; if he has been present at the birth or has signed the registry of birth; or if the child is not sufficiently strong to afford hope that it will live. The legitimacy of a child born three hundred days after marriage cannot in any way be contested; and in other cases proceedings must take place within a month if the husband is on the spot, a reasonable delay being allowed for absence. Children born out of wedlock, except those born of adulterous or incestuous connections, can be legitimated by the subsequent marriage of the father and mother, when both parents have legally recognised them before marriage, or when they recognise them by the act of marriage. The legitimation may be retrospective, and in favour of illegitimate children who have died and left descendants, and the latter will partake of the full advantage of such a step. Children legitimated by a subsequent marriage enjoy precisely the same rights as those born after marriage. A deed of recognition by the father only is binding only on him. Recognition during marriage by the husband or wife alone, in favour of an illegitimate child of either, born before their marriage, and not their joint offspring, can only affect one of them, and does not prejudice the rights of their children born in wedlock; but in case of a divorce, and if there are no other children, such recognition will be taken into account. In contested cases the question as to the putative father is interdicted and only the maternity is admitted. The rights of illegitimate children to the succession of property are defined in cap. iv. of book iii. of the Code Civil, under the head "Des Successions Irrégulières." If the father or mother has legitimate descendants, the share of an illegitimate child is one-third of the hereditary portion which it would have received had it been legitimated; one-half when there are no legitimate descendants, but only brothers or sisters or ascending relations; and three-fourths when the father or mother has neither descendants nor ascending relations, nor brothers or sisters; and an illegitimate child is entitled to inherit the whole of the property of his parents when they have no relations in a certain order of succession. The descendants of an illegitimate person deceased can claim on his behalf. The property of an illegitimate person dying without children goes to his parents, wholly to the one who recognised him by a legal act, or if both parents joined in this act, in equal parts to each;

and if they are dead, the property passes to their legitimate children or to the illegitimate brothers and sisters of the testator, according to circumstances. There are various other regulations on this subject in the French Codes; but the above will be sufficient to indicate the spirit of this department of French jurisprudence.

In *Norway* the state of the law is very favourable to illegitimate children. They are not only legitimated by the subsequent marriage of the parents, but the father may, previous to his contracting a marriage with any other party, declare the legitimacy of his children by a particular act, which gives them the same rights as his children born in wedlock. This declaration of legitimacy is generally made in Norway. (Laing's *Norway.*)

In several of the *States of the North American Union* ante-nuptial children are legitimated by the father's marriage to the mother. This is the case in the states of Vermont, Maryland, Virginia, Georgia, Alabama, Mississippi, Louisiana, Kentucky, Missouri, Indiana, Illinois, and Ohio. Kent states (*Commentaries*, vol. ii. p. 212, ed. 1840) that "bastards are incapable of taking, in New York, under the law of descents and under the statute of distribution of intestate's effects: and they are equally incapable in several of the other United States, which follow in this respect the rule of the English law. But in Vermont, Connecticut, Virginia, Kentucky, Ohio, Indiana, Missouri, Illinois, Tennessee, North Carolina, and Georgia, bastards can inherit from and transmit to their mothers real and personal estate, under some modifications, which prevail particularly in the states of Connecticut, Illinois, North Carolina, and Tennessee; and in New York the estate of an illegitimate intestate descends to the mother and the relatives on the part of the mother. In North Carolina the legislature, in 1829, enabled bastards to be legitimated on the intermarriage of the putative father with the mother, and on his petition, so far as to enable the child to inherit the real and personal estate of his father as if he was lawfully born. In Louisiana bastards (being defined to be children whose father is unknown) have no right of inheritance to the estates of their natural father or mother. But other natural or illegitimate children succeed to the estate of the mother in default of lawful children or descendants, and to the estate of the father who has acknowledged them, if he dies without lineal or collateral relations, or without a surviving wife."

By the *Athenian law* (passed in the archonship of Eucleides, B.C. 403), as quoted by Demosthenes (*Against Macartatus*, cap. 12), illegitimate children were cut out from all inheritance and succession; nor could a man who had legitimate male offspring leave his property to other persons, and consequently not to his illegitimate children. A previous law of Pericles (*Life* by Plutarch, cap. 37) declared that those only were legitimate and Athenian citizens who were born of two Athenian parents. This law, which was repealed or violated in favour of a son of Pericles, was re-enacted in the archonship of Eucleides. (Athenæus, xiii. 577; Demosthenes *Against Eubulides*, cap 10.)

Among the *Romans*, if a man begot children in lawful matrimony (justæ nuptiæ), those children were his, and according to the phraseology of the Roman law, they were said to be in his power. If he begot children on a woman in any other way, they were not in his power; he had not the paternal authority over them, and they had not the rights of children begotten in lawful matrimony. If a man contracted what the Romans called an incestuous marriage, such as the alliance of father and daughter, mother and son, grandfather and granddaughter; as this was really no marriage, the woman was not the man's wife, and the offspring were not his children. But though there was no father, the offspring were considered the children of the mother, for there could generally be no doubt that they were the fruit of her body; accordingly such children had a mother, but they had no father. This was also the condition of children whom a woman brought forth from promiscuous intercouse; they were considered to have no father, because the father was uncertain: they were called Spurii, which is the common Roman

term for persons who had no legal father. The reasons why they were called Spurii, as assigned by the Roman Jurists, are not satisfactory. (Gaius, i. 64.) Adulterine children, children begotten in an adulterous connection, had of course no father. If we closely follow the principle of Roman law contained in the expression that those children are in a man's power, and those only, whom he has begotten in lawful marriage, no person, according to strict Roman law, had a father unless he was begotten in lawful matrimony. If a child was begotten in lawful matrimony, and the woman was divorced from her husband during pregnancy, the husband was the father, whether the woman remained single or married again during pregnancy. This was the case of Tiberius Nero, whose wife Livia was with child when she married Cæsar Octavianus: the child was Drusus, the brother of Tiberius, who was legally the child of his real father, and was afterwards adopted by Cæsar. Under the old Roman law, it does not appear that a person begotten out of lawful matrimony could be legitimated. As children not begotten in lawful marriage had no father, they could have no kinsmen on the (reputed) father's side, no Agnati. They could also have no cognati, for cognatio implied a legal marriage. If, then, a spurius died intestate, no person could claim his property as an adgnatus or cognatus, for there could be neither cognatio nor agnatio where there was no father; but in respect of proximity, his mother, or his brother by the same mother, could claim the Bonorum possessio by virtue of the Edict, Unde Cognati (Ulpian, *Dig.* 38, tit. 4). This instance proves that the spurius was considered the son of his mother, at least for certain purposes; but the origin of this rule of Edictal Law may not have belonged to a very early period. It is stated by some modern writers on Roman law, that with respect to the mother, there was no difference between children conceived in lawful marriage and children that were not.

The English maxim that a bastard is nullius filius is not so good as that of the Roman law, which considers him to be the son of his mother, as indeed the English law does for some purposes and yet not for others. In a case in Lord Raymond's 'Reports,' p. 65, there are some remarks on the maxim of a bastard being nullius filius, and they form a good example of the absurdity of the maxim. The English law also, though it calls a bastard nullius filius, admits him to be the son of his putative father for some purposes and not for others.

The expression natural children, naturales filii, is borrowed from the Roman law. In the later Roman law naturales filii are described as the offspring of a concubine, or of a maid or widow whom a man has debauched. But the older sense of naturalis filius, naturalis pater, was that of natural son, natural father, as opposed to a son or father by adoption, as we see in Cicero and in Livy (xlii. 52; xliv. 4). The word is also used in the same sense in Gaius (i. 104), and by Ulpian (*Dig.* 37, tit. 8, s. 1, § 2). The context will show in any case whether it is the object of the writer to contrast natural-born children with adopted, or illegitimate children with legitimate.

Children who were the sons of a concubine, or of a woman whom a man had seduced, were apparently called naturales because they were known to be the children of a man's body, and not adopted children, nor yet children begotten of promiscuous interourse.

As already observed, the mother of a child may generally be ascertained, but the father cannot be certainly known, even when the woman is a married woman. However, it was a rule of Roman law that the husband must be presumed to be the father of his wife's child (*Dig.* 2, tit. 4, s. 5). This was only a legal presumption, and not an absolute rule. In certain cases the law provided precautions against a child being passed off as the husband's, when it was not his child. If a woman on the death of her husband declared that she was pregnant by him, those who were interested in the property in case the husband left no child, might apply to the Prætor for an order De Ventre Inspiciendo, the object of which was to ascertain the fact of pregnancy, and to secure the woman so that no fraud should be prac-

tised by her as to the birth of a child (*Dig.* 25, tit. 4). In case of divorce, the same process might also be used when the wife declared herself pregnant, and the husband would not admit the fact.

The word "legitimate" (legitimum) in Latin means anything that is consistent with Law, whether it be customary law or positive enactment. A child begotten between two persons who were not in the relation of husband and wife, as a Roman citizen and a slave for instance, was said to be conceived illegitimately (illegitime concipi); and the status of such persons was determined by the status of the mother at the time of the birth. Accordingly, if the mother was a slave at the time of conception, but had been made free before the birth, the child was free. The status of children who were begotten according to law (legitime), was determined by the status of the mother at the time of the conception (Gaius, i. 89). The Roman terms legitimate and illegitimate in the earlier law, as applied to children, therefore did not correspond to our use of the terms. To take an instance from Gaius: if a Roman woman, a citizen, was pregnant, and in that state was subjected to the interdict of fire and water, by which she lost her citizenship and was reduced to the condition of an alien (peregrina), it was the general opinion that if the child was begotten in lawful marriage it was a Roman citizen; if it was begotten from promiscuous intercourse, it was an alien. All this shows that though those children only who were begotten in a legal Roman marriage were in the father's power and had the full rights of Roman citizens, all children otherwise begotten did not correspond to our bastards; they might be slaves, or peregrini, or naturales, or spurii. In the instance just given from Gaius, it appears that a child born of a woman who was a Roman citizen, but not begotten in lawful marriage, was spurius: a child so born of a woman who was not a Roman citizen was Peregrinus. The Roman law did not concern itself about the status of legitimacy or illegitimacy, in our sense, of those who were not the children of Roman citizens; such children were either Peregrini (aliens) or servi (slaves), as appears by another instance from Gaius (i. 91). This other instance is as follows:—Pursuant to a Senatusconsultum passed in the time of the Emperor Claudius, a woman, who was a Roman citizen, and cohabited with another man's slave, against the will of the owner, and contrary to notice from him, might be reduced to a servile condition. If a woman in a state of pregnancy was reduced to a servile condition on account of such cohabitation, the child that was born was a Roman citizen in case the woman conceived in lawful marriage, that is, if she was a married woman; if the pregnancy was the result of promiscuous intercourse, the child was a slave.

The old rule of Roman law that a Spurius (offspring of promiscuous intercourse) could not be made a legitimate son, appears to have been always maintained. The Spurius took the gentile name of his mother. It is mentioned by Suetonius (*Julius Cæsar*, c. 52) as an unusual thing, that Cæsar allowed his son by Cleopatra to be called by his name. The son, however, was not Spurius; he was Peregrinus. In the fourth century the practice of legitimation was introduced by Constantine the Great in favour of naturales, or men's children by concubines. The constitution of Constantine is only known as quoted in a constitution of Zeno (*Code*, v. tit. 27, § 5), which declared that it renewed the constitution of the Divus Constantinus, and enacted that those who, at the time of this constitution being published, were living with free women as concubines, and had begotten children of them, and had no wife and no legitimate children, might render all their children legitimate by marrying their concubines, and such children were to be on the same footing as after-born children of the marriage. But the benefit of the law did not extend to any children by concubines who should be born after the date of the constitution. The object of the law was to induce those who were then living in concubinage to marry, but not to allow any favour to such alliances in future. The Emperor Theodosius the Younger introduced a form of legitimating naturales, which was called Per Oblationem Curiae, which it is not necessary to describe particularly.

Justinian, after various legislative measures, finally established legitimation by subsequent marriage in all cases of naturales, and placed the children who were born before the marriage, and those who might be born after, on the same footing. Anastasius established the mode of legitimation by Adrogation. Naturales, as they were sui juris, could be adopted by the form of adrogation, pursuant to a constitution of Anastasius. There seems to be no reason why this could not have been done according to the old Roman law; but there is probably no evidence that it was done. This constitution of Anastasius was repealed by Justin. Justinian established the practice of legitimation by imperial rescript, and by testament. A constitution of Justinian enacts (*Code*, vi. tit. 57, § 5) that if any woman of rank (illustris mulier) had a son born in matrimony and a bastard (spurius) also, she could give nothing to the bastard, either by testament or gift, nor could he take the property ab intestato, so long as there were lawful children living. The constitution was published in order to settle a doubt as to the rights of spurii. But the children which a concubine who was a free woman had by the commerce of concubinage with a free man, could succeed to the mother's property on the same footing as her legitimate children, if she had any.

It is important to form a right conception of the difference between children not begotten or born in lawful marriage, in the respective systems of English and Roman law. Paternity, in the Roman law, could only be obtained on the condition of begetting a child in lawful marriage. If this condition was not fulfilled, the male had no claim on the child who might be born from his connection with the mother; nor had the child or the mother any claim upon him in respect of maintenance. The child was the fruit of the mother, and it belonged to her in all cases, except when the father could claim it as the offspring of a legal marriage. The spurious child was a member of the mother's family. No child could be in the power of a mother; and her child therefore would either be sui juris if she were so, or if she were in the power of her father, the child would be his grandson and in his power. This seems to be a strict consequence of the principles that have been here laid down as to the condition of spurii. The simplicity of the Roman system in this respect forms a striking contrast with the rules of English law as to children not born in lawful marriage. The Roman law declared that a spurius had a mother and no father, and it followed out this position to its strict consequence. The English law declares that a bastard is nobody's child, a position which it does not follow out to its consequences, simply because a doctrine so manifestly false never could be fully applied to practice.

This doctrine of a bastard being nullius filius was apparently simply intended and adapted to deprive bastards of all capacity to inherit as heirs or next of kin, and consequently to favour escheat; and also to prevent any persons claiming as heirs or next of kin to them, in case of intestacy. Under the old law, and before the passing of the Statute of Wills, it must often have happened that the lands of bastards would escheat. The new rules of law as to bastardy at the present day have been solely framed with reference to the Poor Laws, for the purpose of saving the public, that is, the parish, from the charge of maintaining a bastard child. It is with this object that rules of law have been framed for ascertaining who has begotten the child and must contribute to its support; and for the purpose of settling the disputes between parishes as to the liability to maintain the child, it has been determined that for the purpose of settlement a bastard shall be considered his mother's child. But the old rules of law as to the incapacities of bastards still subsist, and according to these rules, a bastard has neither father, mother, sister or brother, or other remoter kin. His only kin are the children whom he begets in lawful wedlock. An English bastard is therefore the founder of a new stock, the creator of a family whose pedigree can never be traced beyond him; a distinction which other people cannot have.

The Roman Law required children to be begotten in matrimony in order to be lawful children. The English law does not concern itself as to the conception,

but only as to the birth, which must be in wedlock. The Roman law required that when a man obtained possession of a woman's person, he must do it with a matrimonial mind: the English Law cares not with what mind he obtains possession of the woman; it is altogether indifferent about the origin of the connection. The old system combines, with a clear practical rule for determining the father, the condition of a marriage, an elevated notion of the dignity of the marriage connection. The modern system simply lays down a rule for determining paternity, subject to which it is regardless as to the freedom of ante-nuptial sexual connection.

BATH, KNIGHTS OF THE, so called from the ancient custom of bathing previous to their installation. Camden and Selden agree that the first mention of an order of knights, distinctly called Knights of the Bath, is at the coronation of Henry IV. in 1399, and there can be little doubt that this order was then instituted. That bathing had been a part of the discipline submitted to by esquires in order to obtain the honour of knighthood from very early times, is admitted; but it does not appear that any knights were called Knights of the Bath till these were created by King Henry IV.

It became subsequently the practice of the English kings to create Knights of the Bath previous to their coronation, at the inauguration of a Prince of Wales, at the celebration of their own nuptials or those of any of the royal family, and occasionally upon other great occasions or solemnities. Fabyan (*Chron.* edit. 1811, p. 582) says that Henry V., in 1416, upon the taking of the town of Caën, dubbed sixteen Knights of the Bath.

Sixty-eight Knights of the Bath were made at the coronation of King Charles II. (see the list in Guillim's *Heraldry*, fol. Lond. 1679, p. 107); but from that time the order was discontinued, till it was revived by King George I. under writ of Privy Seal, dated May 18, 1725, during the administration of Sir Robert Walpole. The statutes and ordinances of the order bear date May 23, 1725. By these it was directed that the order should consist of a grand-master and thirty-six companions, a succession of whom was to be regularly continued. The officers appropriated to the order, besides the grand-master, were a dean, a registrar, king of arms, genealogist, secretary, usher, and messenger. The dean of the collegiate church of St. Peter, Westminster, for the time being, was appointed ex officio dean of the Order of the Bath, and it was directed that the other officers should be from time to time appointed by the grand-master.

The badge of the order was directed to be a rose, thistle, and shamrock, issuing from a sceptre between three imperial crowns, surrounded by the motto *Tria juncta in uno;* to be of pure gold, chased and pierced, and to be worn by the knight elect, pendent from a red riband placed obliquely over the right shoulder. The collar to be of gold, weighing thirty ounces troy weight, and composed of nine imperial crowns, and eight roses, thistles, and shamrocks issuing from a sceptre, enamelled in their proper colours, tied or linked together by seventeen gold knots, enamelled white, and having the badge of the order pendent from it. The star to consist of three imperial crowns of gold, surrounded with the motto of the order upon a circle gules, with a glory or ray issuing from the centre, to be embroidered on the left side of the upper garment.

The installation dress was ordered to be a surcoat of white satin, a mantle of crimson satin lined with white, tied at the neck with a cordon of crimson silk and gold, with gold tassels, and the star of the order embroidered on the left shoulder; a white silk hat, adorned with a standing plume of white ostrich feathers; white leather boots edged and heeled; spurs of crimson and gold; and a sword in a white leather scabbard, with cross hilts of gold.

Each knight was to be allowed three esquires, who are to be gentlemen of blood, bearing coat-armour; and who, during the term of their several lives, are entitled to all the privileges and exemptions enjoyed by the esquires of the king's body or the gentlemen of the privy chamber.

In 1815, the Prince Regent, being de-

sirous to commemorate the auspicious termination of the long war in which the empire had been engaged, and of marking his sense of the courage and devotion manifested by the officers of the king's forces by sea and land, ordained that thenceforward the order should be composed of three classes, differing in their ranks and degrees of dignity.

The First class to consist of knights grand crosses, which designation was to be substituted for that of knights companions previously used. The knights grand crosses, with the exception of princes of the blood-royal holding high commissions in the army and navy, not to exceed seventy-two in number; whereof a number not exceeding twelve might be nominated in consideration of services rendered in civil or diplomatic employments. To distinguish the military and naval officers upon whom the first class of the said order was then newly conferred, it was directed that they should bear upon the ensign or star, and likewise upon the badge of the order, the addition of a wreath of laurel, encircling the motto, and issuing from an escrol inscribed *Ich dien;* and the dignity of the first class to be at no time conferred upon persons who had not attained the rank of major-general in the army or rear-admiral in the navy.

The Second class was to be composed of knights commanders, who were to have precedence of all knights bachelors of the United Kingdom; the number, in the first instance, not to exceed one hundred and eighty, exclusive of foreign officers holding British commissions, of whom a number not exceeding ten may be admitted into the second class as honorary knights commanders; but in the event of actions of signal distinction, or of future wars, the number of knights commanders may be increased. No person to be eligible as a knight commander who does not, at the time of his nomination, hold a commission in his Majesty's army or navy; such commission not being below the rank of lieutenant-colonel in the army or of post-captain in the navy. By a subsequent regulation in 1815, no person is now eligible to the class of K.C.B. unless he has attained the rank of major-general in the army or rear-admiral in the navy. Each knight commander to wear his appropriate badge or cognizance, pendent by red riband round the neck, and his appropriate star embroidered on the left side of his upper vestment. For the greater honour of this class, it was further ordained that no officer of his Majesty's army or navy was thenceforward to be nominated to the dignity of a knight grand cross who had not been appointed previously a knight commander of the order.

The Third class to be composed of officers holding commissions in his Majesty's service by sea or land, who shall be styled companions of the said order; not to be entitled to the appellation, style, or precedence of knights bachelors, but to take precedence and place of all esquires of the United Kingdom. No officer to be nominated a companion of the order unless he shall previously have received a medal or other badge of honour, or shall have been specially mentioned by name in despatches published in the *London Gazette* as having distinguished himself.

The bulletin announcing the re-modelling of the Order of the Bath was dated Whitehall, January 2, 1815.

By another bulletin, dated Whitehall, January 6, 1815, the Prince Regent, acting in the name and on behalf of his Majesty, having taken into consideration the eminent services which had been rendered to the empire by the officers in the service of the Honourable East India Company, ordained that fifteen of the most distinguished officers of that service, holding commissions from his Majesty not below that of lieutenant-colonel, might be raised to the dignity of knights commanders of the Bath, exclusive of the number of knights commanders belonging to his Majesty's forces by sea and land who had been nominated by the ordinance of January 2. In the event of future wars, and of actions of signal distinction, the said number of fifteen to be increased. His Royal Highness further ordained that certain other officers of the same service, holding his Majesty's commission, might be appointed companions of the order of the Bath, in consideration of eminent services rendered in action

with the enemy; and that the said officers should enjoy all the rights, privileges, and immunities secured to the Third class of the said order. (*Observations introductory to an Historical Essay upon the Knighthood of the Bath*, by John Anstis, Esq. 4to. Lond. 1725; Selden's *Titles of Honour*, fol. Lond. 1672, pp. 678, 679; Camden's *Britannia*, fol. Lond. 1637, p. 172; Sandford's *Genealog. Hist.* fol. 1707, pp. 267, 431, 501, 562, 578; J. C. Dithmari, *Commentatio de Honoratissimo Ordine de Balneo*, fol. Franc. ad. Viad. 1729; Mrs. S. S. Banks's *Collections on the Order of the Bath*, MSS. Brit. Mus.; *Statutes of the Order of the Bath*, 4to. Lond. 1725, repr. with additions in 1812; *Bulletins of the Campaign of* 1815, pp. 1-18.)

BAWDY-HOUSES. [PROSTITUTION.]

BEACON, a sign ordinarily raised upon some foreland or high ground as a sea-mark. It is also used for the fire-signal which was formerly set up to alarm the country upon the approach of a foreign enemy. The word is derived from the Anglo-Saxon beacen or beacn, a sign or signal. *Beac* or *bec* is the real root, which we still have in *beck*, *beckon*.

Fires by night, as signals, to convey the notice of danger to distant places with the greatest expedition, have been used in many countries. They are mentioned in the prophecies of Jeremiah, who (chap. vi. ver. 1) says, "Set up a sign of fire in Beth-haccerem, for evil appeareth out of the north, and great destruction." In the treatise *De Mundo*, attributed to Aristotle, it is said (edit. 12mo. Glasg. 1745, p. 35) that fire-signals were so disposed on watch-towers through the king of Persia's dominions, that within the space of a day he could receive intelligence of any disturbances in the most distant part of his dominions; but this is evidently an exaggerated statement. Æschylus, in his play of the Agamemnon, represents the intelligence of the capture of Troy as conveyed to the Peloponnesus by fire-beacons. During the Peloponnesian war we find fire-beacons (φρυκτοί) employed. (Thucyd. iii. 22.) Pliny distinguishes this sort of signal from the Phari, or light-houses placed upon the coasts for the direction of ships, by the name of "Ignes prænuntiativi," notice-giving fires. (Plin. *Hist. Nat.* edit. Harduin, ii. 73.)

Lord Coke, in his Fourth Institute, chap. xxv., speaking of our own beacons, says, "Before the reign of Edward III. they were but stacks of wood set up on high places, which were fired when the coming of enemies was descried; but in his reign pitch-boxes, as now they be, were, instead of those stacks, set up: and this properly is a beacon." These beacons had watches regularly kept at them, and horsemen called hobbelars were stationed by most of them to give notice in day-time of an enemy's approach, when the fire would not be seen. (Camden, *Brit.* in Hampshire, edit. 1789, vol. i. p. 173.)

Stow, in his *Annals*, under the year 1326, mentions among the precautions which Edward II. took when preparing against the return of the queen and Mortimer to England, that "he ordained bikenings or beacons to be set up, that the same being fired might be seen far off, and thereby the people to be raised."

The Cottonian MS. in the British Museum, Augustus I. vol. i. art. 31, preserves a plan of the harbours of Poole, Purbeck, &c., followed, art. 33, by a chart of the coast of Dorsetshire from Lyme to Weymouth, both exhibiting the beacons which were erected on the Dorsetshire coast against the Spanish invasion in 1588. Art. 58 preserves a similar chart of the coast of Suffolk from Orwell Haven to Gorlston near Yarmouth, with the several forts and beacons erected on that coast.

The power of erecting beacons was originally in the king, and was usually delegated to the Lord High Admiral. In the eighth of Elizabeth an act passed touching sea-marks and mariners (chap. 13), by which the corporation of the Trinity House of Deptford Strond were empowered to erect beacons and sea-marks on the shores, forelands, &c. of the country according to their discretion, and to continue and renew the same at the cost of the corporation. [TRINITY HOUSE.]

Professor Ward, in his 'Observations on the Antiquity and Use of Beacons in England' (*Archæologia*, vol. i. p. 4), says, the money due or payable for the maintenance of beacons was called *Beconagium*,

and was levied by the sheriff of the county upon each hundred, as appears by an ordinance in manuscript for the county of Norfolk, issued to Robert de Monte and Thomas de Bardolfe, who sat in parliament as barons, 14th Edward II.

The manner of watching the beacons, particularly upon the coast, in the time of Queen Elizabeth, may be gathered from the instructions of two contemporary manuscripts printed in the *Archæologia*, col. viii. pp. 100, 183. The surprise of those by the sea-side was usually a matter of policy with an invading enemy, to prevent the alarm of an arrival from being spread.

An iron beacon or fire-pot may still be seen standing upon the tower of Hadley Church in Middlesex. Gough, in his edition of Camden, fol. 1789, vol. iii. p. 281, says, at Ingleborough, in Yorkshire, on the west edge, are remains of a beacon, ascended to by a flight of steps, and ruins of a watch-house. Collinson, in his *History of Somersetshire*, 4to. 1791, vol. ii. p. 5, describes the fire-hearths of four large beacons as remaining in his time upon a hill called Dunkery Beacon in that county. He also mentions the remains of a watch-house for a beacon at Dundry (vol. ii. p. 105). Beacon-hills occur in some part or other of most counties of England which have elevated ground. The Herefordshire beacon is well known. Gough, in his additions to Camden, ut supr. vol. i. p. 394, mentions a beacon hill at Harescombe in Gloucestershire, inclosed by a transverse vallation fifty feet deep. Salmon, in his *History of Hertfordshire*, p. 349, says, at Therfield, on a hill west of the church, stood one of the four beacons of this county.

BEADLE, the messenger or apparitor of a court, who cites persons to appear to what is alleged against them. It is probably in this sense that we are to understand the *bedelli*, or under-bailiffs of manors, mentioned in several parts of the *Domesday Survey*. Spelman, Somner, and Watts all agree in the derivation of beadle from the Saxon bydel, a crier, and that from biŏ, to publish, as in bidding the banns of matrimony. The bedelli of manors probably acted as criers in the lord's court. The beadle of a forest, as Lord Coke informs us in his Fourth Institute, was an officer who not only warned the forest courts and executed process, but made all proclamations.

It appears from the Reports of the Commissioners of Corporation Inquiry (1835), that inferior officers, called Beadles, were appointed in forty-four boroughs out of upwards of two hundred visited by the commissioners.

Bishop Kennett, in the Glossary to his *Parochial Antiquities of Oxfordshire*, says that rural deans had formerly their beadles to cite the clergy and church officers to visitations and execute the orders of the court Christian. Parochial and church beadles were probably in their origin persons of this description, though now employed in more menial services.

Bedel, or Beadle, is also the name of an officer in the English universities, who in processions, &c. precedes the chancellor or vice-chancellor, bearing a mace. In Oxford there are three esquire and three yeomen bedels, each attached to the respective faculties of divinity, medicine and arts, and law. In Cambridge there are three esquire bedels and one yeoman bedel. The esquire bedels in the university of Cambridge, beside attending the vice-chancellor on public solemnities, attend also the professors and respondents, collects fines and penalties, and summon to the chancellor's court all members of the senate. (Ducange's *Gloss.* in voce Bedellus; Kennet, *Paroch. Antiq.* vol. ii. Gloss.; *Gen. Introd. to Domesday Book*, 8vo. edit. vol. i. p. 247; *Camb. and Oxf. Univ. Calendars.*)

BED OF JUSTICE. This expression (*lit de justice*) literally denoted the seat or throne upon which the king of France was accustomed to sit when personally present in parliaments, and from this original meaning the expression came, in course of time, to signify the parliament itself. Under the ancient monarchy of France, a Bed of Justice denoted a solemn session of the king in the parliament, for the purpose of registering or promulgating edicts or ordinances. According to the principle of the old French constitution, the authority of the parliament, being derived entirely from the crown, ceased when the king was present; and

consequently all ordinances enrolled at a bed of justice were acts of the royal will, and of more authenticity and effect than decisions of parliament. The ceremony of holding a bed of justice was as follows:—The king was seated on the throne, and covered; the princes of the blood-royal, the peers, and all the several chambers were present. The marshals of France, the chancellor, and the other great officers of state stood near the throne, around the king. The chancellor, or in his absence the keeper of the seals, declared the object of the session, and the persons present then deliberated upon it. The chancellor then collected the opinions of the assembly, proceeding in the order of their rank; and afterwards declared the determination of the king in the following words: "Le roi, en son lit de justice, à ordonné et ordonne qu'il sera procédé à l'enregistrement des lettres sur lesquelles on à délibéré." The last bed of justice was assembled by Louis XVI. at Versailles, on the 6th of August, 1788, at the commencement of the French revolution, and was intended to enforce upon the parliament of Paris the adoption of the obnoxious taxes, which had been previously proposed by Calonne at the Assembly of Notables. The resistance to this measure led to the assembly of the States-General, and ultimately to the Revolution.

BEDCHAMBER, LORDS OF THE, are officers of the royal household under the groom of the stole. The number of lords, in the reign of William IV., was twelve, who waited a week each in turn. The groom of the stole does not take his turn of duty, but attends his majesty on all state occasions. There were thirteen grooms of the bedchamber who waited likewise in turn. The salary of the groom of the stole was 2000*l.* per annum, of the lords 1000*l.* each, and of the grooms 500*l.*

The salaries of all officers of the royal household are paid out of a fund appropriated for this purpose in the Civil List, and which is fixed by 1 Vict. c. 2, at 131,260*l.* per annum.

Chamberlayne, in his 'Present State of England,' 12mo. 1669, p 249, calls them gentlemen of the bedchamber. "The gentlemen of the Bedchamber," he says, "consist usually of the prime nobility of England. Their office in general is, each one in his turn, to wait a week in every quarter in the king's bedchamber, there to lie by the king on a pallet-bed all night, and in the absence of the groom of the stole to supply his place." In the edition of the same work published in 1716, he adds, "Moreover, they wait upon the king when he eats in private; for then the cup-bearers, carvers, and sewers do not wait. This high office, in the reign of a queen, as in her late majesty's, is performed by ladies, as also that of the grooms of the bedchamber, who were called bedchamber women, and were five in number." At present there are in the queen's household, taking their turns of periodical duty, seven ladies of the bedchamber and eight bedchamber women. There are also a principal lady of the bedchamber and an extra lady of the bedchamber. Both the ladies of the bedchamber and the bedchamber women are allied to the nobility. In the household of the prince consort there are two lords of the bedchamber.

The title of lords of the bedchamber appears to have been adopted after the accession of the House of Hanover. They are first mentioned by that title in Chamberlayne's 'State of England' for 1718.

The question whether the ladies of the bedchamber should be regarded as political offices in the hands of the minister, or whether the appointment should depend upon the personal favour of the queen, formed an important feature in the ministerial crisis which took place in May, 1839. The government of Lord Melbourne had been defeated, and Sir Robert Peel was sent for by the Queen to form a new administration, and on proposing to consult her majesty on the subject of the principal appointments held by ladies in the royal household, her Majesty informed him that it was her pleasure to reserve those appointments, conceiving the interference of the minister "to be contrary to usage," while she added it was certainly "repugnant to her feelings." Sir R. Peel being thus denied the advantage of a public demonstration of her Majesty's "full support and confidence," resigned the task of

forming a cabinet, and the former ministers were sent for, when they held a council and came to the following resolution, which is likely to settle the question on future occasions: "That for the purpose of giving to the administration that character of efficiency and stability and those marks of the constitutional support of the crown which are required to enable it to act usefully to the public service, it is reasonable that the great officers of the court, and situations in the household held by members of parliament, should be included in the political arrangements made in a change of the administration: but they (the ex-ministers) are not of opinion that a similar principle should be applied or extended to the offices held by ladies in her Majesty's household." The defeated ministry was then reinstated.

BEDE-HOUSE, a term used for an alms-house. Hence, bedes-man, or beadsman, a person who resides in a bede-house, or is supported from the funds appropriated for this purpose. The master of St. Katherine's Hospital, London, in the Regent's Park, has the right of appointing a number of non-resident pensioners on that foundation, who are termed bedesmen and bedeswomen. In the recently abolished Court of Exchequer in Scotland, the term bedesman, beadman, or beidman, was used to denote that class of paupers who enjoy the royal bounty. *Bede* is the Anglo-Saxon word for prayer, and as almsmen were bound to pray for the founder of the charity, they were hence called beadsmen. Sir Walter Scott describes the king's beadsmen as an order of paupers to whom the kings of Scotland were in the custom of distributing a certain alms, in conformity with the ordinance of the Roman Catholic church, and who were expected, in return, to pray for the royal welfare and that of the state.

BEGGAR. [MENDICITY.]

BENEFICE (from the Latin *Beneficium*), a term applied both by the canon law and the law of England to a provision for an ecclesiastical person. In its most comprehensive sense it includes the temporalities as well of archbishops, bishops, deans and chapters, abbots and priors, as of parsons, vicars, monks, and other inferior spiritual persons. But a distinction is made between benefices attached to communities under the monastic rule (sub regulâ), which are called *regular* benefices, and those the possessors of which live in the world (in sæculo), which are thence called *secular* benefices. The writers on the canon law distinguish moreover between simple or sinecure benefices, which do not require residence, and to which no spiritual duty is attached but that of reading prayers and singing (as chaplainries, canonries, and chantries), and *sacerdotal* benefices, which are attended with cure of souls.

Lord Coke says, "Beneficium is a large word, and is taken for any ecclesiastical promotion whatsoever." (2 *Inst.* 29.) But in modern English law treatises the term is generally confined to the temporalities of parsons, vicars, and perpetual curates, which in popular language are called livings. The legal possessor of a benefice attended with cure of souls is called the incumbent. The history of the origin of benefices is involved in great obscurity. The property of the Christian church appears, for some centuries after the apostolic ages, to have been strictly enjoyed in common. It was the duty of the officers called deacons (whose first appointment is mentioned in *Acts*, cap. vi.) to receive the rents of the real estates, or *patrimonies*, as they were called, of every church. Of these, as well as of the voluntary gifts in the shape of alms and oblations, a sufficient portion was set apart, under the superintendence of the bishop, for the maintenance of the bishop and clergy of the diocese; another portion was appropriated to the expenses of public worship (in which were included the charge for the repairs of the church), and the remainder was bestowed upon the poor. This division was expressly inculcated by a canon of Gelasius, pope, or rather bishop, of Rome, A.D. 470. (See Father Paul's *Treatise on Ecclesiastical Benefices*, cap. 7.) After the payment of tithes had become universal in the west of Europe, as a means of support to the clergy, it was enacted by one of the capitularies of Charlemagne, that they should be distributed according to this division. When the bishoprics be-

gan to be endowed with lands and other firm possessions, the bishops, to encourage the foundation of churches, and to establish a provision for the resident clergy, gave up their portion of the tithes, and were afterwards by the canons forbidden to demand it, if they could live without it. Although the revenues of the church were thus divided, the fund from which they were derived remained for a long time entirely under the same administration as before. But by degrees every minister, instead of carrying the offerings made in his own church to the bishop, for the purpose of division, began to retain them for his own use. The lands also were apportioned in severalty among the resident clergy of each diocese. But these changes were not made in all places or all at one time, or by any general order, but by insensible degrees, as all other customs are introduced. (See Father Paul's 'Treatise on Benefices,' cap. 9 and 10.) "Some writers have attributed the origin of parochial divisions to a period as early as the fourth century; and it is not improbable that this change took place in some parts of the Eastern Empire, either in that or the succeeding age. Some of the Constitutions of Justinian seem to imply that in his time (the beginning of the sixth century) the system of ecclesiastical property, as it existed in the East, was very similar to that which has prevailed in Catholic countries in modern times." The churches, monasteries, and other pious foundations possessed landed and other property (slaves among the rest), which, by the Constitutions of Justinian, they were restrained from alienating, as they had been in the habit of doing to the detriment of their successors. (Authentica, Const. vii. "On not alienating ecclesiastical things, &c.")

The general obscurity that hangs over the history of the Middle Ages prevents us from ascertaining, with precision, at what period the changes we have alluded to were introduced into the west of Europe. This, however, seems clear, that after the feudal system had acquired a firm footing in the west of Europe, during the ninth and tenth centuries, its principles were soon applied to ecclesiastical as well as lay property. Hence, as the estates distributed in fief by the kings of France and Germany among their favoured nobles were originally termed *beneficia* [BENEFICIUM], this name was conferred, by a kind of doubtful analogy, upon the temporal possessions of the church. Thus, the bishoprics were supposed to be held by the bounty of the kings (who had by degrees usurped the right originally vested in the clergy and people of filling them up when vacant), while the temporalities of the inferior ecclesiastical offices were held of the bishops, in whose patronage and disposal they for the most part then were. The manner of investiture of benefices in those early times was probably the same as that of lay property, by the delivery of actual possession, or of some symbols of possession, as the ring and crozier, which were the symbols of investiture appropriated to bishoprics.

Benefices being thus endowed, and recognised as a species of private property, their number gradually multiplied during the ages succeeding that of Charlemagne. In England especially several causes contributed to the rise of parochial churches. "Sometimes" (says Dr. Burn, *Eccles. Law*, title "Appropriation") "the itinerant preachers found encouragement to settle amongst a liberal people, and by their assistance to raise up a church and a little adjoining manse. Sometimes the kings, in their country vills and seats of pleasure or retirement, ordered a place of worship for their court and retinue, which was the original of royal free chapels. Very often the bishops, commiserating the ignorance of the country people, took care for building churches as the only way of planting or keeping up Christianity among them. But the more ordinary method of augmenting the number of churches depended on the piety of the greater lords, who, having large fees and territories in the country, founded churches for the service of their families and tenants within their dominion. It was this that gave a primary title to the patronage of laymen; it was this made the bounds of a parish commensurate to those of a manor; and it was this distinct property of lords and tenants that by degrees allotted new parochial bounds, by

the adding of new auxiliary churches." [ADVOWSON.]

It appears, however, from the last-mentioned author, that if there were any new fee erected within a lordship, or there were any people within the precinct not dependent on the patron, they were at liberty to choose any neighbouring church or religious house, and to pay their tithes and make their offerings wherever they received the benefits of religion. This by degrees gave rise to the arbitrary appropriation of tithes, which, in spite of positive enactment, continued to prevail till the end of the twelfth century, when Pope Innocent III. by a decretal epistle to the archbishop of Canterbury, enjoined the payment of tithes to the ministers of the respective parishes where every man dwelt. This injunction, though not having the force of a law, has been complied with ever since, so that it is now a universal rule of law in England, that tithes are due of common right to the parson of the parish, unless there be a special exemption. [TITHES.]

The twelfth century was also the æra of an important change in the manner of investiture of ecclesiastical benefices in England. (Blackstone, vol. ii. p. 23; Father Paul, c. 24.) Up to this time the simple donation of the patron was sufficient to confer a legal title to a benefice, provided the person to whom it was given was in holy orders, for otherwise he must be first presented to the bishop, who had power to reject him in case of unfitness; but the popes, who had in the eleventh and twelfth centuries successfully contended against every other species of ecclesiastical investiture being exercised by laymen, now procured that the presentation of the patron should not be of itself sufficient to confer an ecclesiastical benefice, even though qualified by the discretionary power of rejection (in case the benefice was given to a layman) which was already vested in the bishop. This was the origin of the ceremonies of *institution*, which is the mode of investiture of the spiritualities; and *induction*, which is the mode of investiture of the temporalities of a benefice. Where the bishop was the patron of the benefice, the two forms of *presentation* and *institution* were united in that of *collation*.

For the origin and nature of ecclesiastical patronage in England as a subject of property, the rules of law which apply to it as such, the limitations within which and the forms according to which it must be exercised, and the mode by which it may be vindicated, together with the respective rights of the bishop or ordinary, the archbishop, and the crown, in the case of lapse, see ADVOWSON; and also Burn's 'Ecclesiastical Law,' arts. "Advowson," "Benefice." The statute 3 & 4 Will. IV. c. 27, made some important alterations in the law on this subject. 1. By the old law, suits for recovery of advowsons were not within the statutes of limitations; but § 30 of the above-mentioned act subjects them to a period of limitation of three successive incumbencies, or sixty years, during which the enjoyment of the benefice has been by virtue of a title adverse to that of the person instituting the suit. By § 33 the utmost period within which an advowson can be recovered is limited to a hundred years from the time of an adverse presentation, without any intermediate exercise of the right of patronage by the person instituting the suit, or by any persons from whom he derives his title. The act abolishes certain ancient remedies for the disturbance of the right of patronage, (§ 36); so that except in certain cases, specified in §§ 37, 38 of the act, the sole method of vindicating the right now is by writ of *Quare Impedit*. [QUARE IMPEDIT.]

Although the popes, in denying to laymen the right of ecclesiastical investiture, had still left them in possession of the substantial part of the patronage of benefices, even this privilege was for some centuries not only very much questioned, but in many instances entirely wrested from them by papal encroachment. (Father Paul, c. 30, *et seq.*; Hallam's *Middle Ages*, vol. ii. c. 7.)

The first attacks by the popes upon the rights of private patrons (which took place towards the latter end of the twelfth century) assumed the form of letters of request called "mandates" or "expectatives," praying that benefices might be conferred on particular individuals. What was first asked as a favour was soon after claimed as a right, and rules were laid

down as to grants and revocations of expectatives. The popes next proceeded to claim the patronage of all benefices *vacantia in curiâ*, i. e. which fell vacant by the incumbents dying at the court of Rome. The number of these, through the management of that court, which contrived on various pretences to draw ecclesiastics of all ranks to Rome from different parts of Europe, became by degrees very considerable. But Clement V. in the beginning of the fourteenth century went beyond all his predecessors, by laying it down broadly as a maxim, that the full and free disposition of all ecclesiastical benefices belonged to the pope. (*Clementines*, lib. ii. tit. 5. c. 1; F. Paul, c. 35.) It followed as a consequence from this principle, that the pope could make reversionary grants, or *provisions*, as they were called, during the lives of the incumbents; and that he could reserve such benefices as he thought fit for his own peculiar patronage. At the same time, dispensations from the canons against non-residence and pluralities, and permissions to hold benefices in commendam, were freely granted, so that by these and similar means in some instances fifty or sixty preferments were held by the same person at once. The evils of this system were felt all over Europe. The best benefices were everywhere filled with Italian priests, ignorant alike of the language and habits of the people to whose spiritual wants they were bound to minister. England in particular suffered so much from papal encroachments during the reign of Henry III., that the English deputies at the Council of Lyon (about A.D. 1245) complained to the pope that the foreign clergy drew annually from England upwards of 70,000 marks. This remonstrance produced no effect, but the system at length became so intolerable, that a determined plan of opposition to it was gradually formed in the principal nations of Western Europe. In this opposition our own ancestors took the lead, and their efforts were in the end completely successful. The parliament assembled at Carlisle in the 35th year of Edward I. wrote a strong remonstrance to Pope Clement V. against the papal encroachments on the rights of patronage and the numerous extortions of the court of Rome. This remonstrance appears to have produced no effect, but it may be cited as a proof of the spirit of the times. The government of Edward II. was too feeble to act upon this spirit. The first prince who was bold enough to assert the power of the legislature to restrain the papal encroachments was Edward III. After complaining ineffectually to Clement VI. of the abuse of papal reservations, he (A.D. 1350) procured the famous Statute of Provisors (25 Edw. III. stat. 6) to be passed. This act provided that all elections and collations should be free according to law, and that in case any provision, collation, or reservation should be made by the court of Rome of any archbishopric, bishopric, dignity, or other benefice, the king should for that turn have the collation of such archbishopric or other dignities elective, &c.

This statute was fortified by several others in this and the succeeding reigns, 27 Edw. III. stat. 1, c. 1; 38 Edw. III. stat. 1, c. 4; 3 Rich. II. c. 3; 7 Rich. II. c. 12 (which enacts that no alien* shall be capable of being presented to any ecclesiastical preferment); 12 Rich. II. c. 15; 13 Rich. II. stat. 2, c. 2 and 3; 16 Rich. II. c. 5; 2 Hen. IV. c. 3; 7 Hen. IV. c. 8; 3 Hen. V. c. 4. These statutes, which inflict very severe penalties on persons endeavouring to enforce the authority of papal bulls and provisions in England, are sometimes called, from the initial words of the writ issued in execution of the process under them, the statutes of *præmunire;* and the offence of maintaining the papal power is itself (according to Blackstone, vol. iv. p. 112) called by the name of *præmunire.* The statutes against papal provisions (though not very strictly enforced) re-

* Dr. Burn says:—"It seemeth that an alien, who is a priest, may be presented to a church." By 13 Rich. II. and 1 Hen. V. c. 7, Frenchmen were precluded holding benefices in England; and Lord Coke, on a review of the ancient statutes, is of opinion that the bishop ought not to admit an alien. The Bishop of Spalatro, an alien, was, however, appointed Dean of Windsor; and in Dr. Seaton's case, who was born in Scotland before the Union, it was held that he was capable to be presented to a benefice in England, and that so it would have been, had he been born in France, Spain, or in any friendly kingdom.

mained unrepealed, in spite of the attempts of the popes and their adherents to obtain their abrogation.

The rights of ecclesiastical patronage, having been thus solemnly vindicated by the English parliament, have, in their fundamental principles, remained unaltered to the present time. The ceremonies of the presentation and institution in the case of lay patrons, and of collation where the bishop is patron, are still necessary to give a title to all benefices with a cure of souls, except those which are technically called perpetual curacies and donatives; and the title so given is incomplete without corporal induction into possession of the temporalities of the benefices. There are also certain acts enjoined either by the canon law or statute, the non-performance of which will subject the incumbent to the deprivation of the benefice into which he has been lawfully inducted.

There is no difference between institution and collation as to the action itself, but they differ somewhat in their respective consequences. Thus, by institution, the church is said to be full against all persons but the king, and if it has been full for the space of six months, this is a sufficient answer to any action by private persons, or even by the king, where he claims as a private patron and not by royal prerogative, as in case of lapse or otherwise. But by collation the church is not full so as to render a plea to that effect available in the temporal courts, except against the collator. Every clerk before institution or collation is required by the canon law to take the oath against simony, and the oath of the canonical obedience to the bishop, and to declare by subscription his assent to the doctrine of the king's supremacy, to the Book of Common Prayer, and the Thirty-nine Articles. The subscription to the Thirty-nine Articles is also imposed by statute 13 Eliz. c. 12, upon all persons to be admitted to any benefice with cure of souls. Moreover, the statutes 1 Eliz. c. 1, and 1 Will. and Mary, c. 8, § 5, require that every person collated or promoted to any ecclesiastical benefice shall, before he takes upon himself to supply or occupy the same, take the oaths of allegiance and supremacy; and by statute 13 & 14 Car. II. c. 4 (commonly called the Act of Uniformity), every parson and vicar shall, before his admission to be incumbent, subscribe a declaration of conformity to the Liturgy of the Church of England as by law established.

The acts of institution or collation so far confer a right to the temporalities of the benefice, that the clerk may enter upon the glebe-land and take the tithes, but he cannot sue for them or grant them until induction. By induction the church becomes full, even against the king, and the clerk is seised of the temporalities of the benefice, and invested with the full rights and privileges of a parson, *persona ecclesiæ;* but by the Act of Uniformity he must, within two months after he is in actual possession of his benefice, upon some Sunday, openly before his congregation, read the morning and evening prayers, and declare his assent to the Book of Common Prayer, on pain, in case of neglect or refusal, of being *ipso facto* deprived of his benefice. The same statute obliges him, on pain of deprivation, to read publicly, within three months after his subscription to the declaration of conformity to the Liturgy, the bishop's certificate of his having made such subscription, together with the declaration itself: but the statute 23 Geo. III. c. 28, makes an exception where the incumbent is prevented by some lawful impediment, to be allowed and approved of by the ordinary of the place. The same penalty of deprivation is imposed by 13 Eliz. c. 12, in case of an incumbent failing, within two months after induction, to read publicly in the church the Thirty-nine Articles, and to declare his assent to them. The 23 Geo. III. c. 28, provides that, in case of sickness or other lawful impediment, it shall be deemed a sufficient compliance with the statute of Elizabeth if the incumbent reads the Articles, and declares his assent to them at the same time that he declares his assent to the Book of Common Prayer. Finally, by statute 1 Geo. I. sess. 2, c. 13, the parson must, within six months after his admission to the benefice, take the oaths of allegiance and abjuration in one of the courts at Westminster, or at the general quarter-

sessions of the peace, on pain of being incapacitated to hold the benefice, and of incurring certain other disabilities therein specified. Such are the means by which a clerk's legal title as a parson, rector, or vicar is acquired and maintained.

Every parson, or rector of a parish with cure of souls, and, where the parsonage is appropriated, every vicar, or perpetual curate, though in his natural capacity an individual, is in contemplation of law a body corporate, with perpetuity of succession. The rector or parson is entitled to the freehold of the parsonage-house and glebe-lands, as well as the tithes of the parish, except where a special exemption from the payment of tithes exists by prescription or otherwise; but owing to the practice of appropriation, which formerly prevailed to a great extent in England, and has been attended with very remarkable consequences, the tithes are now often vested in laymen, who have vicars or curates under them to perform the spiritual duties. [ADVOWSON.] This custom was not confined to spiritual corporations aggregate, but deans and other officers in cathedrals, and in some places even parish priests, procured the privilege of appointing a vicar to perform the spiritual duties of the church, while its revenues were appropriated to themselves and their successors. Hence it happens that in some places a rector and vicar are instituted to the same church; in which case the rector is excused from duty, and the rectory is called a sinecure benefice, as being *sine curâ animarum.* (Burn's *Eccles. Law*, tit "Appropriation.") In order to effectuate an appropriation it was necessary that the patron should obtain the consent of the king and the bishop, as each of these had an interest in the patronage of the church in case of lapse, which, as a corporation never dies, could not take place after the appropriation; and upon the making an appropriation, an annual pension was reserved to the bishop and his successors, called an indemnity, and payable by the body to whom the appropriation was made. In an ancient deed of appropriation preserved in the registry of the archbishop of Canterbury, the ground of the reservation is expressed to be for a recompense of the profits which the bishop would otherwise have received during the vacancy of the benefice. (Burn, *Ibid.*)

After the appropriation the appropriators and their successors became perpetual parsons of the church; but if the corporation were dissolved, the perpetuity of persons being gone, the appropriation ceased, and the church recovered its rights.

This principle would have come into extensive operation at the time of the dissolution of the monasteries in England, if the legislature had not expressly provided against it. By the statutes 27 Henry VIII. c. 28, and 31 Henry VIII. c. 13, the possessions of these religious houses, and by a subsequent statute, 32 Henry VIII. c. 24, those of the Knights of St. John of Jerusalem, were all vested in the crown. In each of these statutes parsonages and tithes are expressly included, and the first two confirm the royal grants made or hereafter to be made of this property. Tithes are also included in two subsequent statutes, 37 Henry VIII. c. 4, and 1 Edward VI. c. 14, by which the possessions of chantries and religious fraternities are given to the crown. The last of these statutes empowers the king's commissioners, therein referred to, to ordain and sufficiently endow vicars in perpetuity in parish churches annexed to the religious fraternities whose possessions were confiscated by that act; and also to endow in perpetuity a schoolmaster or preacher in such places where the religious fraternities or incumbents of chantries were bound by the original foundation to keep a schoolmaster or priest. The property acquired by the crown from the above-mentioned sources, and from the dissolution of alien priories in the reign of Henry V., was freely bestowed by the kings of England, especially Henry VIII., not only upon spiritual persons and corporations, but upon laymen. Hence it is that there are so many instances in England at the present time of not merely the right to tithes, but the property of entire rectories being vested in laymen. These benefices are sometimes called lay, but more commonly impropriate rectories, as being (according to Spelman) improperly in the hands of

laymen. The rector is in that case termed the impropriator; but this appellation is now indiscriminately applied not only to lay individuals and corporations, but to all spiritual persons and corporations who, either by virtue of ancient appropriations or by grants from the crown since the dissolution of the religious fraternities, are entitled to the tithes and other revenues of the church without performing any spiritual duties. By statute 32 Henry VIII. c. 7, the remedies which the law had provided in the ecclesiastical courts for the subtraction of tithes are communicated to laymen, and their title to tithes is put on the same footing with that to land, by giving them the same or similar actions for vindicating their estates in those and other ecclesiastical profits against all adverse claimants whatsoever. In short, tithes and other fruits of benefices when vested in laymen, are liable to the same process of execution for debt, and subject to the same incidents of alienation, descent, escheat, and forfeiture as all other incorporeal real property. Moreover, by statute 43 Eliz. c. 2, tithes impropriate are made liable to poor-rates. They are also included in the Land-tax Acts; and by the late Statute of Limitations, 3 & 4 Will. IV. c. 27, actions and suits for their recovery are subject to the same periods of limitation as those for the recovery of land.

Another consequence of appropriation in England, besides the vesting the possessions of the church in laymen, was the endowment of vicarages. The appropriating corporations at first used to depute one of their own body to reside and officiate in the parish churches by turns or by lot, and sometimes by way of penance; but as this practice caused scandal to the church, especially in the case of monastic orders whose rules were thereby violated, the monks by degrees ceased to officiate personally in the appropriated churches, and this duty was committed to stipendiary vicars or curates, who were, however, removable at the will of the appropriators. One of the numerous pretexts urged by the monastic bodies for obtaining appropriations had been, that they might be the better enabled to keep up hospitality in their respective houses, and that they might relieve the poor. These duties, however, were so far neglected as to give rise to general discontent. In addition to which the officiating priests were very poorly paid, and oppressed with hard service, and consequently unable to answer the calls of hospitality and charity. At length the legislature, by way of a partial remedy to these evils, enacted (15 Richard II. c. 6), "That in every licence for the appropriation of a parish church it should be expressed that the diocesan bishop should ordain, in proportion to the value of the church, a competent sum to be distributed among the poor parishioners annually, and that the vicarage should be sufficiently endowed." Still, as the vicar was removable at pleasure, he was not likely to insist very strictly on the legal sufficiency of the endowment. Therefore, to establish the total independence of vicars upon the appropriators, the statute 4 Henry IV. c. 12, provided, "That from thenceforth in every church appropriated there should be a secular person ordained vicar perpetual, canonically instituted and inducted, and covenably (fitly) endowed by the discretion of the ordinary, to do divine service, and to inform the people, and to keep hospitality there; and that no religious, *i. e.* regular priest, should in anywise be made vicar in any church appropriated." From the endowments made in pursuance of this statute have arisen all the vicarages that exist at the present day. The title of the vicar to tithes and other ecclesiastical dues, such as Easter offerings (which are said to be due to the parson or vicar of common right), and customary payments for marriages, burials, and baptisms, depends primarily upon the deed of endowment. As, however, the rector and vicar are persons equally capable in law of holding such property, the deed is not always conclusive evidence in any question that may arise between these parties as to their respective rights; but it is said, that where either of them has for a long time had undisputed enjoyment of any particular portion of the tithes or other fruits of the benefice, which is not consistent with the terms of the original deed, a variation of that deed by some subsequent instrument may be

presumed in favour of such long enjoyment. The endowments of vicarages have generally consisted of a part of the glebe-land of the parsonage, and what are technically called the small tithes of the parish. In some places also a portion of the great tithes has been added to the vicarages. [TITHES.]

A vicarage by endowment becomes a distinct benefice, of which the patronage is vested in the impropriator or sinecure rector, and is said to be appendant to the rectory. It follows that the vicar, being endowed with separate revenues, is enabled to recover his temporal rights without the aid of the patron.

The loss of the original Act of Endowment is supplied by prescription; *i. e.* if the vicar has enjoyed any particular tithes or other fruits by constant usage, the law will presume that he was legally endowed with them.

If the impropriator, either by design or mistake, presents the vicar to the parsonage, the vicarage will be dissolved, and the person presented will be entitled to all the ecclesiastical dues as rector.

It is to be observed that the statute 4 Henry IV. c. 12, did not extend to appropriations made before the first of Richard II. Hence it happens that in some appropriated churches no vicar has ever been endowed. In this case the officiating minister is appointed by the impropriator, and is called a perpetual curate. He enters upon his official duties by virtue of the bishop's licence only, without institution or induction. It appears, moreover, from Dr. Burn (*Eccles. Law*, tit. "Curate"), that there were some benefices which, being granted for the purpose of supporting the hospitality of the monasteries (*in mensas monachorum*), and not appropriated in the common form, escaped the operation of the statute of Henry IV. In this case, according to the same author, the benefices were served by temporary curates belonging to the religious houses, and sent out as occasion required; and sometimes the liberty of not appointing a perpetual vicar was granted by dispensation, in benefices not annexed to tables of the monasteries. When such appropriations, together with the charge of providing for the cure, were transferred (after the dissolution of monasteries) from spiritual societies to single lay persons (who, being incapable of serving them themselves, were obliged to nominate a person to the bishop for his licence to serve the cure), the curate by this means became so far perpetual as not to be removable at the pleasure of the impropriator, but only for such causes as would occasion the depriving of a rector or vicar, or by the revocation of the bishop's licence. (Burn, *Ibid.*) Though the form of licences to perpetual cures expresses that they last only during the bishop's pleasure, the power of revocation, thus reserved to the bishop, has seldom, if ever, been exercised.

There is another kind of perpetual curacy which arises from the erection in a parish of a chapel-of-ease subject to the mother church. But the curacies of chapels-of-ease are not benefices in the strict legal sense of the word, unless they have been augmented out of the fund called Queen Anne's Bounty. The officiating ministers are not corporations in law with perpetuity of succession, as parsons, vicars, and other perpetual curates. Neither are chapels-of-ease subject to lapse, although the bishop may, by process in the ecclesiastical courts, compel the patrons to fill them up. But the statute 1 Geo. I. sess. 2, c. 10, provides that all churches, curacies, or chapels which shall be augmented by the governors of Queen Anne's Bounty shall be from thenceforth perpetual cures and benefices, and the ministers duly nominated and licensed thereunto shall be in law bodies politic and corporate, and have perpetual succession, and be capable to take in perpetuity; and that if suffered to remain void for six months they shall lapse in like manner as presentative livings. The 59 Geo. III. c. 134, contained provisions enabling the Church Building Commissioners to assign districts to chapels under the cure of curates, and it enacted that no such chapelry should become a benefice by reason of any augmentation of the maintenance of the curate by any grant or bounty. Both this statute and that of 1 Geo. I. were partially repealed by 2 & 3 Vict. c. 49, which has a clause enacting that any church or chapel augmented by

Queen Anne's Bounty, and which has had, or may hereafter have, a district assigned to it, is to be a perpetual curacy and benefice. The commissioners for building new churches may assign districts to them, and such church or chapel may be augmented by the governors of Queen Anne's Bounty.

The district churches built in pursuance of several recent acts (as 58 Geo. III. c. 45; 59 Geo. III. c. 134; 3 Geo. IV. c. 72; 5 Geo. IV. c. 103; 7 & 8 Geo. IV. c. 72; 1 & 2 Will. IV. c. 38; 2 & 3 Will. IV. c. 61; 7 Will. IV. & 1 Vict. c. 107; 2 & 3 Vict. c. 49; 3 & 4 Vict. c. 60) are made perpetual cures, and the incumbents corporations.

A donative is a spiritual preferment, whether church, chapel, or vicarage, which is in the free gift of the patron, without making any presentation to the bishop, and without admission, institution, or induction by mandate from the bishop or any other; but the donee may by the patron, or by any other authorized by the patron, be put into possession. Nor is any licence from the bishop necessary to perfect the donee's title to possession of the donative, but it receives its full effect from the single act and sole authority of the donor. The chief further peculiarity of donatives is their exemption from episcopal jurisdiction.

The manner of visitation of donatives is by commissioners appointed by the patron. If the patron dies during the vacancy of a donative benefice, the right of nomination descends to the heir-at-law, and does not belong to his executors, as is the case with the patronage of presentative livings. Donatives, if augmented by Queen Anne's Bounty, become liable to lapse, and also to episcopal visitation. (1 Geo. I. sess. 2, c. 10.) But no donatives can be so augmented without the consent of the patron in writing, under his hand and seal. Both perpetual curates and incumbents of donatives are obliged to declare their assent to the Thirty-nine Articles and the Book of Common Prayer, in the manner prescribed by the statute 13 Eliz. c. 12, and the Act of Uniformity above mentioned, and must also take the oaths of allegiance, supremacy, and abjuration, according to the provisions of statutes 1 Geo. I. sess. 2, c. 13, and 9 Geo. II. c. 26; and the right of patronage, both of perpetual curacies and donatives, is to be vindicated by writ of *Quare Impedit*. (Burn, *Eccles. Law*, tit. "Donative.")

Neither the augmentation nor the alienation of benefices with cure of souls was favoured by the old English law. To prevent augmentation was one of the objects of the statutes of Mortmain, one of which (23 Hen. VIII. c. 10) expressly makes void all assurances of lands in favour of parish churches, chapels, &c.

It might have been reasonably expected that, at the time of the dissolution of monasteries, the clergy would have received back those revenues which, being originally vested in them for religious purposes, had been subsequently appropriated by the monks. Such a measure, however, was not agreeable to the temper either of King Henry VIII. or his parliaments. When that king came to a rupture with the pope, he resolved to free his dominions from the payment of first-fruits and tenths to the papal treasury. The first of these taxes consisted of one year's whole profits of every spiritual preferment, according to a valuation of benefices made by the pope's authority; the second, of the tenth part of the annual profit of each benefice, according to the same valuation. The payment of these to the pope was prohibited by statute 25 Henry VIII. c. 20; and the next year, by statute 26 Henry VIII. c. 3, the whole of the revenue arising therefrom was annexed to the crown. The last-mentioned statute directed these taxes to be paid according to a new valuation of ecclesiastical benefices to be made by certain commissioners appointed for the purpose. This valuation is what is called the valuation of the king's books. The statute 26 Henry VIII. c. 3, was confirmed by statute 1 Eliz. c. 4. [First Fruits and Tenths.]

The subsequent proceedings of Henry VIII., after the appropriation of the possessions of the monasteries, tended rather to enrich the collegiate and other corporations aggregate with the revenues of the church, than to revest them in their ancient possessors. Nor was the latter

object the aim of his successors until more than a century after his death; but after the restoration of Charles II. the scandal of lay impropriations gave rise to some relaxation of the statutes of mortmain. Thus by statute 17 Car. II. c. 3, power was given to lay impropriators of tithes to annex such tithes to, or settle them in trust for, the parsonage or vicarage of the parish church to which they belonged, or for the perpetual curate, if there was no vicarage endowed; and by the same statute, in cases where the settled maintenance of the parsonage or vicarage, with cure, did not amount to the full sum of 100*l.* a year, clear of all charges and reprises, the incumbent was empowered to purchase for himself and his successors lands and tithes, without licence of mortmain. Another statute of the same reign (29 Car. II. c. 8) confirms, for a perpetuity, such augmentations of vicarages and perpetual curacies as had been already made for a term of years by ecclesiastical corporations on granting leases of impropriatory rectories. The act also confirms future augmentations to be made in the same manner, subject to a limitation which has since been taken off by statute 1 & 2 Will. IV. c. 45, by which the provisions of 29 Car. II. c. 8, have been considerably extended. The acts 1 & 2 Vict. c. 107, and 3 & 4 Vict. c. 113, have made further provisions for the augmentation of benefices. But the principal augmentation of the revenues of the church was made under the provisions of the statute 2 & 3 Anne, c. 11. By this act, and by the queen's letters-patent made in pursuance of it, all the revenue of the first-fruits and tenths was vested in trustees for the augmentation of small benefices. This fund is what is usually called Queen Anne's Bounty, and has since been further regulated by statutes 5 Anne c. 24; 6 Anne, c. 27; 1 Geo. I. sess. 2, c. 10; 3 Geo. I. c. 10.

The trustees, who are certain dignitaries of the church, and other official personages for the time being, are incorporated by the name of "the governors of the Bounty of Queen Anne, for the augmentation of the maintenance of the poor clergy," and have authority to make rules for the distribution of the fund, which rules are to be approved of by the king under his sign manual. Every person having any estate or interest in possession, reversion, or contingency, in lands or personalty, is empowered to settle such estate or interest, either by deed enrolled or will, upon the corporation, without licence of mortmain; and the corporation are empowered to admit benefactors to the fund into their body. (For the principal rules established by the corporation, with respect to augmentations and the operation of these rules, see Burn's *Eccles. Law*, tit. "First-Fruits and Tenths.")

The 1 Geo. I. sess. 2, c. 10, renders valid agreements made with benefactors to Queen Anne's Bounty, concerning the right of patronage of augmented churches in favour of such benefactors, where the agreements are made by persons or bodies corporate having such an interest in the patronage of such churches as the act renders necessary; but an agreement by a parson or vicar must be made with consent of his patron and ordinary. The governors are also empowered by the same statute to make agreements with patrons of donatives or perpetual cures for an augmented stipend to the ministers of such benefices when augmented, to augment vacant benefices, and, with the concurrence of the proper parties, to exchange lands settled for augmentation.

It should be observed that a modern statute of mortmain, the Statute of Charitable Uses, 9 Geo. II. c. 36, imposed certain forms, a strict compliance with which was necessary in all gifts to Queen Anne's Bounty. But these restrictions have been removed by statute 43 Geo. III. c. 107, as far as respects gifts of real property for augmentation of the bounty; and a provision for the augmentation of benefices not exceeding 150*l.* per annum was made by 46 Geo. III. c. 133, which discharged all such benefices from the land-tax, without any consideration being given for the discharge, with a proviso that the whole annual amount thus remitted should not exceed 6000*l.*

The Ecclesiastical Commissioners for England have, since October, 1842, been pursuing a scheme for the augmentation of small livings, by which an annual net

income as nearly as may be of 150*l.* will be secured to the incumbent of every benefice or church with cure of souls, being either a parish church or chapel, with a district legally assigned thereto, and having a population of 2000, and not being in the patronage of lay proprietors. The funds for augmentation accrue from the suspension of cathedral endowments. The number of livings which had been augmented to May 1, 1844, was 562, and the total sum applied is 29,809*l.* The following table will show more distinctly what has been done in the case of 496 livings:—

Income raised to	No. of Livings.	Annual Augmentation.	Population.
£150	261	£16,722	2000*
120	96	4,374	1000
100	80	3,253	500
80	59	1,430	500
	496	25,779	

The alienation of the temporalities of benefices, even in perpetuity, was not forbidden by the common law, provided it were made with the concurrence of the principal parties interested, viz. the parson, patron, and ordinary. Thus, at the common law, lands might have become exempt from the payment of tithe by virtue of an agreement entered into between the tithe-payer and the parson or vicar, with the necessary consent, for the substitution of land in lieu of tithe. But the statute 13 Eliz. c. 10, prohibits, among other bodies corporate, parsons and vicars from making any alienation of their temporalities beyond the life of the incumbent, except by way of lease for twenty-one years, or three lives, "whereupon the accustomed yearly rent or more shall be reserved and payable yearly during the said term." Further restrictions are imposed by the stat. 18 Eliz. c. 11, which requires that where any former lease for years is in being, it must be expired, surrendered, or ended within three years next after the making of the new lease, and all bonds and covenants for renewing or making leases contrary to this and the last-mentioned statute are made void. The stat. 14 Eliz. c. 11, as to houses in towns, extends the term specified in the 13 Eliz. c. 10, to forty years, but prohibits leases of such houses in reversion, and allows of absolute alienation by way of exchange. But the consent of patron and ordinary is still necessary in order to make the leases of parsons and vicars binding upon their successors. It is said that about the time when these statutes were passed, it was a practice for patrons to present unworthy clergymen to their vacant benefices, on condition of having leases of those benefices made to themselves at a very low rate. The consequences of this were not unlike what ensued from the appropriation of benefices by monastic corporations: the incumbents did not reside, and the churches were indifferently served by stipendiary curates. To remedy this evil, it was provided by stat. 13 Eliz. c. 20 (made perpetual by 3 Car. I. c. 4), that no lease of a benefice with cure should endure longer than while the lessor should be ordinarily resident and serving the cure, without absence for more than eighty days in any one year, but should immediately, upon non-residence, become void; and that the incumbent should forfeit one year's profits of the benefice, to be distributed among the poor: but the statute contains an exception of the case where a parson, allowed by law to have two benefices, demises the one upon which he is not most ordinarily resident to his curate. The 18 Eliz. c. 11, provides that process of sequestration shall be granted by the ordinary to obtain the profits so forfeited. By stat. 14 Eliz. c. 11, bonds and covenants, and by stat. 43 Eliz. c. 9, judgments entered into or suffered in fraud of the stat. 13 Eliz. c. 20, are made void.

The 13 Eliz. c. 20, also renders void all charges upon ecclesiastical benefices by way of pension or otherwise. This last provision has been held to extend to mortgages and annuities, even if made only for the life or incumbency of the mortgagor. But the strictness of the laws prohibiting all alienations by or in favour of ecclesiastical persons, has in modern times been somewhat relaxed by the legislature for purposes of public convenience. Thus the General Inclosure Act, 41 Geo. III. c. 109, and the Land-tax

* And upwards.

Redemption Act (42 Geo. III. c. 116, amended by 45 Geo. III. c. 77, 50 Geo. III. c. 58, 53 Geo. III. c. 123, 54 Geo. III. c. 17, and 57 Geo. III. c. 100), confer ample powers of purchase and alienation for such purposes.

Other acts, as 17 Geo. III. c. 53 (amended by 21 Geo. III. c. 66, and 5 Geo. IV. c. 89), empower ecclesiastical incumbents, with consent of patron and ordinary, to raise money by sale or mortgage of the profits of the benefice, for a term, for the purpose of building and repairing parsonage-houses; and the governors of Queen Anne's Bounty are permitted to advance money for the same object. (See also 43 Geo. III. c. 108, and 51 Geo. III. c. 115.)

Again, the stat. 55 Geo. III. c. 147 (amended by 1 Geo. IV. c. 6, 6 Geo. IV. c. 8, and 7 Geo. IV. c. 66) empowers incumbents, with consent of patron and ordinary, and according to the forms prescribed by the act, to exchange their parsonage-houses and glebe-lands, and to purchase and annex to their benefices other parsonage-houses and glebe-lands. (See also 56 Geo. III. c. 141.) And by the above-mentioned stat. 1 & 2 Will. IV. c. 45, rectors and vicars are enabled to charge their benefices in favour of chapels-of-ease within their cures.

Although an ecclesiastical benefice cannot be alienated for the satisfaction of the incumbent's debts, the profits may be sequestrated for that purpose, even where the debt arises from an annuity which the incumbent has attempted to charge upon the benefice. (2 Barn. and Adolp. 734.) And this is the ordinary practice upon a judgment against a clergyman in one of the temporal courts. The writ of *fieri facias* issues against him as in the case of a layman, but the sheriff returns that he is a beneficed clerk having no lay fee; upon which a writ of *levari facias* issues to the bishop of the diocese, by virtue of which the profits of the benefice are sequestrated until the whole debt is satisfied.

In case of a beneficed clergyman seeking his discharge under the Insolvent Act, the assignees of his estate must apply for a sequestration, in order to render the profits of the benefice available for the payment of his debts. (7 Geo. IV. c. 57, § 28.)

The duties and liabilities of spiritual persons come more properly under the head of CLERGY, but it is not inconsistent with the subject of the present article to mention the non-residence of spiritual persons upon their benefices, which (besides being cognizable in the ecclesiastical courts) is visited with severe penalties by different acts of parliament. The principal of the old enactments on the subject is stat. 21 Hen. VIII. c. 13 (amended and enlarged by 25 Hen. VIII. c. 16, 28 Hen. VIII. c. 13, and 33 Hen. VIII. c. 28), which imposed certain penalties upon persons wilfully absenting themselves from their benefices for one month together, or two months in the year. The 21 Hen. VIII. c. 13, was repealed by 1 & 2 Vict. c. 106.

The following was the state of the law respecting non-residence prior to the passing of the important statute of 1 & 2 Vict. c. 106. We give these details, as they are of some historical interest. The chief statutes on the subject were the 21 Hen. VIII., c. 13 (and other acts of that king), and 57 Geo. III. c. 99. The act of Hen. VIII. excepted the chaplains to the king and royal family, those of peers, peeresses, and certain public officers, during their attendance upon the household of such as retain them; and also all heads of colleges, magistrates, and professors in the universities, and all students under a certain age residing there *bonâ fide* for study. And the king might grant dispensations for non-residence to his chaplains, even when they were not attending his household. The residence intended by the law was to be in the parsonage-house, if there were one; but if there were no house of residence, the incumbent might reside within the limits of the benefice, or of the city, town, or parish where the benefice was situate, provided such residence were within two miles from the church or chapel of the benefice; and in all such cases a residence might be appointed by the bishop, even without the limits of the benefice. These acts (which extended also to archdeaconries, deaneries, and dignities in cathedral and collegiate churches) were consolidated and

amended by stat. 57 Geo. III. c. 99, now repealed. By this last act, every incumbent absenting himself from a benefice with cure, without licence, for the period of three months consecutively, or at several times for so many days as are equal to this period, and abiding elsewhere than at some other benefice, forfeited for an absence exceeding three months, but not above six months, one-third of the annual value of the benefice, clear of all outgoings except the curate's salary. Absences of a longer duration were subjected to proportional penalties, and the whole of the penalty in each case was given to the party suing, together with such costs as are allowed by the practice of the court where the action is brought. All who were exempt from residence before the last statute were still exempt, and the exemption was extended to several others, including public officers in either of the two universities, and tutors and public officers in any college. Students in the universities were exempted till they were thirty years of age; and the king's prerogative to grant dispensations for non-residence to his chaplains was not affected by the statute. But no person could have the benefit of an exemption, unless he made a notification of it every year, within six weeks from the 1st of January, to the bishop of the diocese. Besides the exemptions, the bishop might grant a licence for non-residence for the illness or infirmity of an incumbent, his wife or child, and for other causes specified in the act; and if the bishop refused a licence, the incumbent might appeal to the archbishop. The bishop might also grant licences for non-residence for causes not specified in the act, but in that case the licences must be allowed by the archbishop. Licences might be revoked, and no licence could continue in force above three years from the time of its being granted, or after the 31st of December in the second year after that in which it was granted. The act also contained directions with respect to the lists of exemptions and licences for non-residence, which were to be kept in the registry of each diocese for public inspection.

The act 57 Geo. III. c. 99 (repealed, as already observed, by 1 & 2 Vict. c. 106), provided also for the appointment of licensed curates in benefices, the incumbents of which were absent with or without licence or exemption, and regulated the salaries of such curates upon a scale proportioned to the value of each benefice, and the number of the population within its precincts; and in all cases of non-residence from sickness, age, or other unavoidable cause the bishop might fix smaller salaries at his discretion.

The subject of non-residence is now regulated by 1 & 2 Vict. c. 106. Under this act the penalties for non-residence of an incumbent without a licence are one-third of the annual value of the benefice when the period of absence exceeds three and does not exceed six months; one-half of the annual value when the absence exceeds six and does not exceed eight months; and when the period of non-residence has been for the whole year, three-fourths of the annual income is forfeited. Certain persons are exempt from the penalties of non-residence, as the heads of colleges at Oxford and Cambridge, the warden of Durham University, and the head-masters of Eton, Winchester, and Westminster schools. Privileges for temporary non-residence are granted to a great number of persons, as persons holding offices in cathedrals and at the two universities of Oxford and Cambridge; chaplains of the royal family, of the bishops, or of the House of Commons; those who serve the office of chancellor, vicar-general, or other similar office; readers in the royal chapels; preachers in the inns of court or at the Rolls; the provost of Eton, warden of Winchester College, master of the Charter-House, and the principals of St. David's College and of King's College. During the time any of the above classes or persons are actually engaged in their duties, their absence is not accounted as non-residence. Performance of cathedral duties may be accounted as residence under certain restrictions. Every person desirous of a licence for non-residence must present a petition to the bishop setting forth a number of particulars, for instance, if he intends to employ a curate, and what salary he proposes to give him, &c. In case of a licence being refused, an appeal lies to

the archbishop. A copy of every licence must be filed in the registry of the diocese, and an alphabetical list made out of all such licences, which list may be inspected on payment of a fee of three shillings. A copy of the licence, and a statement of the grounds on which it was obtained, must be transmitted to the churchwardens of the parish of which the person mentioned in the licence is the incumbent, to be by them deposited in the parish chest, and produced at the archdeacon's visitation. Every year, in the month of January, the bishop of each diocese transmits to his clergy a schedule containing eighteen questions, or, if the incumbent be non-resident, twenty-eight questions, replies to which are to be transmitted to the bishop in three weeks. They are intended, amongst other things, to check non-residence, and to render the discipline and government of the clergy more strict. An abstract of the returns is to be made yearly to her Majesty in Council.

There are certain liabilities which parsons, vicars, and other spiritual persons legally incur in respect of their benefices. Thus, by 43 Eliz. c. 2, they are rateable in respect of their benefices for the relief of the poor; and, although the burden of the repairs of the body of the church falls upon the parishioners, the rector (and, where the parsonage is appropriated, the impropriator) is liable for the repairs of the chancel. And the stat. 35 Edw. I. sess. 2, the object of which was to prohibit rectors from cutting down trees in churchyards, contains an express exception of the case where such trees are wanted for the repair of the chancel.

Besides the liability implied in the last-mentioned prohibition, all ecclesiastical incumbents are liable for dilapidations. A dilapidation is said to be the pulling down or destroying in any manner any of the houses or buildings belonging to a spiritual living, or suffering them to run into ruin or decay, or wasting or destroying the woods of the church, or committing or suffering any wilful waste in or upon the inheritance of the church. Such proceedings may be prevented by the spiritual censures of the ordinary; and the profits of the benefice may be sequestered until the damage be repaired; and the Court of Chancery will, at the suit of the patron, grant an injunction to restrain this as well as every other species of waste. Or the next incumbent may recover damages for dilapidations either in the Spiritual Court, or in an action on the case at common law against his predecessor, or, if he be dead, against his personal representatives.

The remedies for the subtraction of tithes given by the law of England to the clergy were sufficiently ample. [TITHES.]

With respect to actions and suits for recovery of lands or rents by parsons, vicars, or other spiritual corporations sole, the 3 & 4 Will. IV. c. 27, § 29, subjects them to the period of limitation of two successive incumbencies, together with six years after the appointment of a third person to the benefice, or in case of this period not amounting to sixty years, then to the full period of limitation of sixty years.

Having thus shown how possession of the different kinds of benefices in England is acquired and maintained, and what are the principal legal incidents of such possession, it remains to consider how benefices may be vacated or avoided. And this may happen several ways: 1. By the death of the incumbent. 2. By resignation, which is made into the hands of the ordinary, except in the case of donatives, which must be resigned into the hands of the patron, who alone has jurisdiction over them. The resignation must be absolute, unless it be for the purpose of exchange, in which case it may be made on the condition that the exchange shall take full effect. Where two parsons wish to exchange benefices, they must obtain a licence from the ordinary to that effect; and if the exchange is not fully executed by both parties during their lives, all their proceedings are void. (See Burn, *Eccles. Law*, tit. "Exchange.") 3. A benefice may be avoided by the incumbent's being promoted to a bishopric; but the avoidance in this case does not take place till the actual consecration of the new prelate. The patronage of the benefice so vacant belongs for that turn to the king, except in the case of a clergyman beneficed in

England accepting an Irish bishopric: for no person can accept a dignity or benefice in Ireland until he has first resigned all his preferments in England; so that in this case the patron, and not the king, has the benefit of the avoidance. The avoidance may be prevented by a licence from the crown to hold the benefice in commendam. Grants in commendam may be either temporary or perpetual. They are said to be derived from an ancient practice in the Roman Catholic church, whereby, when a church was vacant, and could not be immediately filled up, the care of it was commended by the bishop or other ecclesiastical superior to some person of merit, who should take the direction of it until the vacancy was filled up, but without meddling with the profits. This practice, however, in process of time being abused for the purpose of evading the provisions of the canon law against pluralities, became the subject of considerable complaint, and of some restraints, by the authority of popes and councils, and particularly of the celebrated Council of Trent in the sixteenth century. (See Father Paul's 'Treatise on Benefices.') A benefice may be granted in commendam to a bishop after consecration, but then the patron's consent must be obtained, in order to render the commendam valid. If the incumbent of a donative be promoted to a bishopric, no cession takes place, but it seems that he may retain the donative without a commendam. (Viner's *Abr.* tit. "Presentation," K. 6.)

4. If an incumbent of a benefice with cure of souls accepts a second benefice of a like nature without procuring a dispensation, the first, by the provisions of the canon law, is so far void, that the patron may present another clerk, or the bishop may deprive; but till deprivation no advantage can be taken by lapse. The stat. 21 Henry VIII. c. 13, which was repealed by 1 & 2 Vict. c. 106, provided that where a person, having a benefice of the value of 8*l.* per annum or upwards, according to the valuation of the king's books, accepted any other, the first should be adjudged void, unless he obtained a dispensation in conformity with the provisions of the statute. And dispensations not in conformity with the statute were declared void, and heavy penalties were imposed upon persons endeavouring to procure them. But by virtue of such dispensations, spiritual persons of the king's council might hold three benefices with cure, and the other persons qualified by the statute to receive dispensations might each hold two such benefices.

The persons who might receive dispensations were, the king's chaplains, those of the queen and royal family, and other persons who were allowed by the statute to retain a certain number of chaplains, and also the brethren and sons of all temporal lords, the brethren and sons of knights, and all doctors and bachelors of divinity and law admitted to their degrees in due form by the universities. The privilege was not extended to the brethren and sons of baronets, as the rank of baronet did not exist at the time when the statute was passed.

The statute expressly excepted deaneries, archdeaconries, chancellorships, treasurerships, chanterships, prebends, and sinecure rectories. Donatives are within the statute, if a donative is the first living; but if a donative is the second living taken without a dispensation, the first is not made void by the statute, the words of which are "instituted and inducted to any other," words not applicable to donatives. But it seems that both in the cases excepted by the statute, and in the case where the second living is a donative, a dispensation is equally necessary in order to hold both preferments, as otherwise the first would be voidable by the canon law.

The stat. 36 George III. c. 83, brought chapels and churches augmented by Queen Anne's Bounty within the Statute of Pluralities, by enacting that such churches and chapels shall be considered as presentative benefices, and that the licence to serve them shall render other livings voidable in the same manner as institution to presentative benefices. It appears that both by the common law and by the provisions of statute 37 Henry VIII. c. 21, and 17 Charles II. c. 3, a union or consolidation of two benefices into one might, with consent of patrons,

ordinaries, and incumbents, be made in such a manner as not to be affected by the statute of Pluralities. Under § 72 of 1 & 2 Vict. c. 106, benefices may be divided or consolidated with the consent of patrons, and there is a clause for apportioning in certain cases the incomes of two benefices belonging to one patron. (Burn's *Eccles. Law*, tit. "Union.")

For the manner of obtaining dispensations from the archbishop, and for the form of such dispensations, and of the confirmation thereof by the lord chancellor, and the provisions which the canon law requires to be inserted in such dispensations, see Burn's *Eccles. Law*, tit. "Plurality."

The subject of Pluralities is now regulated by 1 & 2 Vict. c. 106, entitled 'An Act to abridge the holding of Benefices in Plurality, and to make better provision for the residence of the clergy.' By this act no persons holding more benefices than one shall hold therewith any cathedral preferment or any other benefice. The term "cathedral preferment" comprehends every dignity and office in any cathedral or collegiate church. An archdeacon may hold two benefices with his archdeaconry under the limitations of the act. Two benefices held by one person must be within ten miles of each other, and a licence of dispensation must be obtained from the archbishop of Canterbury. No person is to hold a benefice with a population of more than three thousand persons, if he has already a benefice with a population exceeding five hundred persons; and two benefices cannot be held if their joint yearly value exceeds 1000*l.* If, however, the yearly value of one of the benefices be under 150*l.*, and the population does not exceed 2000, two benefices may be held together, although their joint value exceed 1000*l.*; but the incumbent must give to the bishop a statement in writing of the reasons why the two benefices should be held together, and the bishop may require him to reside nine months in the year on one of them.

5. Another mode of avoidance of a benefice is by deprivation under a sentence of an ecclesiastical court. The principal causes on which sentence of deprivation is usually founded are heresy, blasphemy, gross immorality; or conviction of treason, murder, or felony.

6. A benefice may be avoided by act of the law; as where the incumbent omits or refuses to subscribe the Thirty-Nine Articles, or declaration of conformity to the Liturgy, or to read the Articles or Book of Common Prayer, in pursuance of the statutes which render those acts necessary. But the most remarkable mode of avoidance which is to be classed under this head is that for simony, in pursuance of the statute 31 Elizabeth, c. 6. By this statute for the avoiding of simony, it is among other things enacted, that if any patron, for any sum of money, reward, profit, or benefit, or for any promise, agreement, grant, bond, of or for any sum of money, reward, gift, profit, or benefit, shall present or collate any person to an ecclesiastical benefice with cure of souls or dignity, such presentation or collation shall be utterly void, and the crown shall present to the benefice for that turn only. The statute also imposes a penalty upon the parties to the simoniacal contract to the amount of double the value of a year's profit of the benefice, and for ever disables the person corruptly procuring or accepting the benefice from enjoying the same. And by statute 12 Anne, sess. 2. c. 12, a purchase by a clergyman, either in his own name or that of another, of the next presentation *for himself*, is declared to be simony, and is attended with the same penalties and forfeiture as are imposed by the statute of Elizabeth. Upon the construction of this statute of Elizabeth it has been held, that if the next presentation can be shown to have been purchased with the intention of presenting a particular person, who, upon a vacancy taking place, is presented accordingly, this fact is sufficient to render the transaction simoniacal. An exception has indeed been made in the case of a father providing for his son by the purchase of a next presentation, but the principle of this exception has lately been denied. (2 B. & C. 652.)

The circumstance of the incumbent being at the point of death at the time of the contract, may also vitiate the transaction; except where the fee simple of the advowson is purchased, in which case

it has been decided that the knowledge of the state of the incumbent's health does not make the purchase simoniacal.

It has been a question much agitated in our courts, whether a presentation is valid where the person presented enters into a bond or agreement, either generally to resign the benefice at the patron's request, or to resign it in favour of a particular person specified in the instrument. After several contrary decisions in the courts below, it was finally decided by the House of Lords, towards the latter end of the last century, that general bonds of resignation were simoniacal and illegal. A similar decision has lately been made by the same tribunal with respect to bonds of resignation in favour of specified persons. As there is no objection on the grounds of public policy to the last-mentioned instruments, if restrained within due limits, the interference of the legislature has been thought necessary in order to regulate transactions of this nature. On this account, after a retrospective act (7 & 8 Geo. IV. c. 25) had been passed, to remedy the hardships that might otherwise have been occasioned by the last-mentioned judgment of the House of Lords, it was finally enacted by the 9 Geo. IV. c. 94, that every engagement, *bonâ fide* made for the resignation of any spiritual office or living, in favour of a person, or one of two persons to be specially named therein, being such persons as were mentioned in a subsequent section of the act, should be valid and effectual in law, provided such engagement were entered into before the presentation of the party entering into the same. By the section referred to, where two persons are specially named in the engagement, each of them must be, either by blood or marriage, an uncle, son, grandson, brother, nephew, or grand-nephew of the patron (provided the patron is not a mere trustee), or of the person for whom the patron is a trustee, or of the person by whose direction the presentation is intended to be made, or of any married woman whose husband in her right is patron, or of any other person in whose right the presentation is intended to be made. The deed containing the engagement to resign must be deposited for inspection with the registrar of the diocese wherein the benefice is situated, and every resignation made in pursuance of such an engagement must refer to the same, and state the name of the person for whose benefit it is made and becomes void, unless that person is presented within six months. The statute is limited in its operation to cases where the patronage is strictly private property.

There are certain benefices of which the patronage is either by custom or act of parliament vested in certain public officers or corporations. Thus, the lord chancellor has the absolute patronage of all the king's livings which are valued at 20*l.* per annum or under in the king's books. It is not known how this patronage of the chancellor was derived; but it appears from the rolls of parliament in the 4 Edward III., that the chancellor at that time had the patronage of all the king's livings of the value of 20 marks or under, and it is not improbable that at the time of making the new valuation of benefices in the reign of Henry VIII., a new grant was made to the chancellor by the crown, in consideration of the altered value or ecclesiastical property.

By the Municipal Corporations Act (5 & 6 Will. IV. c. 76) all advowsons, rights of presentation or nomination to any benefice or ecclesiastical preferment in the gift of any body corporate, according to the meaning of the act, were required to be sold under the direction of the ecclesiastical commissioners, and the proceeds invested in government securities, the interest on which was to be carried to the account of the borough fund (§ 139). The act 1 & 2 Vict. c. 31, was passed for facilitating this transfer of patronage.

By stat. 3 Jac. I. c. 5, popish recusants are disabled from exercising any right of ecclesiastical patronage; and the patronage of livings in the gift of such persons is vested in the two universities, according to the several counties in which the livings are situate. This disability was confirmed by the subsequent statutes 1 William and Mary, c. 26, 12 Anne sess. c. 14, and extended to cases where the right of patronage was vested in a trustee for a papist; and is not removed (along with the other disabilities affecting Roman

Catholics) by statute 10 George IV. c. 7. But the last-mentioned act provides, that where any ecclesiastical patronage is connected with any office in the gift of the crown, which office is held by a Roman Catholic, the patronage, so long as the office is so held, shall be exercised by the archbishop of Canterbury. The clause in 3 Jac. I. c. 5, relating to patronage held by Roman Catholics, is saved in the act 7 & 8 Vict. c. 102, for repealing a number of penal enactments against the Roman Catholics.

The church of Ireland being the same with that of England, the ecclesiastical polity of each is in its main principles the same. The same law of ecclesiastical patronage, the same classification of benefices, the same circumstances of lay impropriations, and, in short, the same ecclesiastical privileges and disabilities, may prevail in each country. But a most important alteration in the distribution of the revenues of the Irish church was effected by the 3 & 4 Will. IV. c. 37, amended by 4 & 5 Will. IV. c. 90. By this act certain ecclesiastical commissioners are established as a corporation for the augmenting of small livings out of the funds which come into their hands by virtue of the act, and for other ecclesiastical purposes. The funds in question are to arise partly from the revenues of certain bishoprics which are abolished, and the surplus revenues of the rest above certain limits fixed by the act; partly from the money paid by the tenants of lands held under bishops' leases renewable for ever, for a conversion of such leasehold interest into a perpetuity; and partly from a tax levied on all ecclesiastical dignities and benefices, according to a scale of taxation specified in a schedule to the act; in consideration of which tax all first-fruits are abolished. The commissioners are invested with extraordinary powers by the act. Thus, they have authority to disappropriate benefices united to dignities, and to unite them to vicarages in lieu thereof. They have also the power of suspending the appointment to benefices which are in the gift either of the crown, of archbishops, bishops, or other dignitaries, or of ecclesiastical corporations, where it appears that divine service has not been performed within such benefices for three years before the passing the act. [ECCLESIASTICAL COMMISSION.]

The number of benefices in Ireland will be as follows when the Church Temporalities Act comes into full operation:—

No.				
488	under the annual value of			£150
390	of	£150	and under	300
278	„	300	„	450
117	„	450	„	550
73	„	550	„	750
21	„	750	„	850
13	„	850	„	1000
8	„	1000	„	1100
4	„	1100	„	1250
3	„	1250	„	1500

The law respecting benefices in the church of Scotland will be found under the head of SCOTCH CHURCH.

We have already mentioned the attempts of the popes to acquire the right of patronage to all ecclesiastical benefices in Europe, and the successful measures that were taken in England for resisting their pretensions. After ineffectual attempts had been made at the councils of Constance and Basle, in 1414 and 1433, to check the papal encroachments, each of the principal European governments seems to have asserted in some measure its own ecclesiastical independence, either by entering into concordats with the pope, or assuming the right of controlling his pretensions by national legislation. [CONCORDAT.]

For the numerous abuses with respect to the patronage, acquisition, and transmission of benefices that prevailed in the Roman Catholic Church, especially in Italy, during the fifteenth and sixteenth centuries, see Father Paul's 'Treatise on Benefices,' cap. 44-46.

The Council of Trent in 1547 attempted to reform some of these evils, as that of pluralities and commendams, hereditary succession to the benefices, and non-residence; but left the great abuse of papal reservations untouched. The consequence of this, according to Father Paul (cap. 50), was that in his time (at the beginning of the seventeenth century) the reservations were multiplied to such a degree, that the pope had five-sixths of the benefices in Italy at his disposal.

The following Table is abstracted partly from a Parliamentary Return presented to the House of Commons in 1834, *and partly from the Report of the Commissioners appointed to inquire into the Ecclesiastical Revenues of England and Wales, published June,* 1835.*

A.	Number of Parishes.	Churches and Chapels.	Population, 1831.	B.	C.	D.	E.
				£		£	
St. Asaph, 143 benefices, comprises—Salop (part), Carnarvon (part), Denbigh (part), Flint (part), Merioneth (part), Montgomery (part)	139	143	191,156	42,592	43	3,564	2
Bangor, 123 benefices, comprises—Anglesey, Carnarvon (part), Denbigh (part), Merioneth (part), Montgomery (part)	179	192	163,712	35,064	61	4,928	.
Bath and Wells, 430 benefices, comprises part of Somerset	479	493	403,795	120,310	231	18,578	13
Bristol, 253 benefices, comprises—Dorset, Gloucester (part), Somerset (part).....	298	306	232,026	77,056	133	10,668	3
Canterbury, 346 benefices, comprises—Bucks (part), Essex (part), Kent (part), Middlesex (part), Oxford (part), Suffolk (part), Surrey (part), Sussex (part)	369	374	405,272	123,946	174	14,656	2
Carlisle, 124 benefices, comprises—Cumberland (part), Westmoreland (part).....	100	129	135,002	22,487	44	3,684	3
Chester, 630 benefices, comprises—Chester, Cumberland (part), Lancaster, Westmoreland (part), York, N. Riding (part), York, E. Riding (part), Denbigh (part), Flint (part)	530	631	1,883,958	169,495	267	23,239	4
Chichester, 267 benefices, comprises—Sussex (part).....	289	302	254,460	82,673	122	9,440	3
St. David, 409 benefices, comprises—Hereford (part), Brecon, Cardigan, Carmarthen, Glamorgan (part), Montgomery (part), Pembroke, Radnor (part), Monmouth (part)..	525	561	358,451	60,653	207	11,464	7

* It must be recollected that since the Report of the Ecclesiastical Commissioners in 1835, various alterations have been made in several Dioceses, and that the new Diocese of Ripon has been created; but no official return has yet been published showing the number of Benefices in each Diocese as now settled.

A. Diocese and number of Benefices in each returned to the Commissioners, including sinecure Rectories, but exclusive of Benefices annexed to other Preferments. Total number of Benefices, 10,517. B. Aggregate Amount of the gross Incomes of Incumbents in each Diocese, exclusive as before mentioned. Total, 3,193,498*l*. C. Number of Curates in each Diocese. Total, 5227. D. Amount of Stipends to Curates in each Diocese. Total, 424,549*l*. E. Number of Benefices in each Diocese not returned to the Commissioners. Total, 178.

A.	Number of Parishes.	Churches and Chapels.	Population, 1831.	B.	C.	D.	E.
				£		£	
Durham, 192 benefices, comprises—Cumberland (part), Durham, Northumberland (part)	140	214	469,933	74,457	98	8,556	2
Ely, 150 benefices, comprises—Cambridge (part), Norfolk (part)	158	160	133,722	56,495	75	6,583	2
Exeter, 613 benefices, comprises—Cornwall and Devon	681	711	795,416	194,181	323	28,759	16
Gloucester, 283 benefices, comprises—Gloucester (part), Wilts (part)	296	330	315,512	81,552	143	11,405	3
Hereford, 321 benefices, comprises—Hereford (part), Monmouth (part), Salop (part), Worcester (part), Montgomery (part). Radnor (part)	346	360	206,327	93,552	157	12,995	7
Lichfield and Coventry, 610 benefices, comprises—Derby, Salop (part), Stafford (part), Warwick (part)	650	655	1,045,481	170,104	307	24,948	5
Lincoln, 1251 benefices, comprises—Bedford, Bucks (part), Herts (part), Hunts, Leicester, Lincoln, Northampton (part), Oxford (part), Rutland (part), Warwick (part)	1370	1377	899,468	373,976	629	48,347	18
Llandaff, 192 benefices, comprises—Glamorgan (part), Monmouth (part)	221	228	181,244	36,347	113	6,749	..
London, 640 benefices, comprises—Bucks (part), Essex (part), Herts (part), Middlesex (part)	650	689	1,722,685	267,742	351	35,118	2
Norwich, 1026 benefices, comprises—Cambridge (part), Norfolk (part), Suffolk (part)	1178	1210	690,138	331,750	521	38,510	37
Oxford, 196 benefices, comprises part of Oxfordshire	207	237	140,700	51,395	103	7,954	8
Peterborough, 293 benefices, comprises—Northampton (part), Rutland (part)	335	338	194,339	98,381	139	11,266	6
Rochester, 94 benefices, comprises—Cambridge (part), Kent (part)	107	111	191,875	44,565	60	6,551	2
Salisbury, 398 benefices, comprises—Berks, Wilts, Gloucester (part)	451	474	384,683	134,255	223	18,174	11
Winchester, 419 benefices, comprises—Hants and Surrey (part)	408	464	729,607	153,995	202	19,858	7
Worcester, 223 benefices, comprises—Salop (part), Stafford (part), Warwick (part), Worcester (part)	230	260	271,687	73,255	111	9,002	3
York, 891 benefices, comprises—Northumberland (part), Notts, York, E. Riding (part), York, N. Riding (part), York, W. Riding	741	876	1,496,538	223,220	390	29,553	12

Total Number of Parishes, 11,067; of Churches and Chapels, 11,825; Population, 13,897,187.

The Annual Average for each person upon the Total Gross Income returned is 303*l.*; and the Annual Average upon the Total Net Income returned is 235*l.* The Annual Average of the Curates' Stipends is 81*l.*

The Total Number of Benefices in England and Wales, including those not returned to the Commissioners, but exclusive of those annexed to other Preferments (24 in number), is 10,718. Of these Benefices 297 are under 50*l.*; 1629 from 50*l.* to 100*l.*; 1602 from 100*l.* to 150*l.*; 1354 from 150*l.* to 200*l.*; 1799 from 200*l.* to 300*l.*; 1326 from 300*l.* to 400*l.*; 830 from 400*l.* to 500*l.*; 954 from 500*l.* to 750*l.*; 323 from 750*l.* to 1000*l.*; 134 from 1000*l.* to 1500*l.*; 32 from 1500*l.* to 2000*l.*; 18 from 2000*l.* and upwards. Of these last, one is the rectory of Stanhope in the diocese of Durham, of the net annual value of 4843*l.*; and another is the rectory of Doddington in the diocese of Ely, of the net annual value of 7306*l.* The diocese of Sodor and Man is included in the total number of benefices.

The Total Gross Income of the Benefices in England and Wales, including those not returned, and calculated upon the Average of those returned, is 3,251,159*l.*; and the Total Net Income of the same is 3,055,451*l.*

If the amount of the Curates' Stipends, which is included in the Income of the Incumbents, is subtracted therefrom, the Net Income returned will be reduced to 2,579,961*l.*, giving an Average of 244*l.* to each Incumbent.

Table classing the Patronage of Benefices, and showing the number possessed by each Class.

DIOCESES.	Crown.	Archbishops and Bishops.	Deans and Chapters, or Ecclesiastical Corporations Aggregate.	Dignitaries and other Ecclesiastical Corporations sole.*	Universities, Colleges, and Hospitals, not Ecclesiastical.†	Private Owners.	Municipal Corporations.‡
St. Asaph	2	120	. .	2	1	19	
Bangor	6	78	1	7	3	29	
Bath and Wells	21	29	39	103	23	224	4
Bristol	12	15	11	42	14	159	10
Canterbury	18	148	36	36	14	87	2
Carlisle	4	20	27	19	3	54	
Chester	26	34	34	227	13	299	6
Chichester	19	31	21	49	15	130	
St. David's	63	102	16	61	12	159	
Durham	12	45	36	28	4	66	
Ely	2	31	21	13	46	39	
Exeter	63	44	69	117	11	309	5
Gloucester	29	30	35	40	26	133	3
Hereford	26	36	26	54	11	179	
Lichfield and Coventry	53	18	10	122	6	391	5
Lincoln	156	73	63	177	102	688	
Llandaff	14	6	28	19	7	118	
London	75	86	58	105	68	277	
Norwich	95	85	47	124	86	596	13
Oxford	12	13	22	16	59	78	
Peterborough	31	18	12	40	32	171	
Rochester	10	15	17	8	4	44	
Salisbury	35	39	44	67	60	154	
Winchester	30	53	15	79	53	197	
Worcester	20	14	38	39	15	98	
York	103	57	61	257	33	397	5
Sodor and Man	15	8	. .	. .	. .	1	
Total	952	1248	787	1851	721†	5096	53‡

* The above classification comprises only the patronage *returned* to the Commissioners. There are 178 non-returns, and 86 returned omitting the patronage.

As the patronage is frequently divided between different classes of patrons, and is included under each, it is obvious that the aggregate total of the above numbers will not agree with the total number of benefices.

* This includes the patronage or nomination exercised by rectors and vicars.

† This number does not comprise the livings in the patronage of the dean and canons of Christ Church, which is included among the deans and chapters; and it is further to be observed, that united livings, and livings with chapels annexed, have in either case been treated as single benefices.

‡ These Benefices have been sold under the Municipal Corporations Act, 5 & 6 Wm. IV. c. 76, &c. and 2 Vict. c. 31.

Table classing the Appropriations and Impropriations; showing the Number possessed by each Class, and the Number of Cases in each Diocese in which the Vicarage is partly or wholly endowed with the Great Tithes.

DIOCESES.	Crown.	Archbishops and Bishops.	Deans and Chapters, or Ecclesiastical Corporations Aggregate.	Dignitaries and other Ecclesiastical Corporations sole.	Universities, Colleges, and Hospitals.	Private Owners.	Munpl. Corporations (Advowsons sold).	Vicarages partly endowed.	Vicarages wholly endowed.
St. Asaph	..	12	10	8	..	27	..	1	
Bangor	..	11	7	7	..	29	..	3	
Bath and Wells	1	9	27	36	..	105	4	5	8
Bristol	..	1	16	11	2	48	2	2	3
Canterbury	..	48	46	12	8	49	1	2	7
Carlisle	..	8	30	3	2	28	..	3	1
Chester	2	21	28	5	15	113	..	6	3
Chichester	..	7	11	19	5	67	..	3	12
St. David's	1	18	20	49	4	124	2	13	4
Durham	1	7	28	7	13	61	1	6	3
Ely	..	10	26	..	19	27	..	2	1
Exeter	2	5	61	23	4	156	7	9	11
Gloucester	2	14	32	2	3	54	1	1	5
Hereford	..	20	25	11	12	80	..	11	14
Lichfield and Coventry	1	8	20	49	5	240	4	9	10
Lincoln	3	39	48	36	31	347	3	12	8
Llandaff	1	10	30	9	4	45	2	3	6
London	1	13	26	16	16	144	1	3	4
Norwich	1	47	48	2	22	197	9	7	14
Oxford	..	7	18	5	27	36	..	4	
Peterborough	..	8	10	1	6	65	..	..	1
Rochester	1	3	13	1	4	21	..	1	
Salisbury	1	6	37	23	21	93	2	3	3
Winchester	..	3	8	16	29	78	..	6	5
Worcester	5	4	25	8	3	43	3	3	3
York	7	40	52	79	26	265	1	2	5
Sodor and Man	8	6	..	..	..	1	..	1	1
Total	38	385	702	438	281	2552	43	121	132

The number of vicarages of which the impropriations have not been returned to the Commissioners is 223.

BENEFI'CIUM, a Latin word, literally "a good deed;" also "a favour," "an act of kindness." This word had several technical significations among the Romans.

When a proconsul, proprætor, or quæstor returned to Rome from his province, he first gave in his accounts to the treasury; after which he might also give in the names of such persons as had served under him in the province, and by their conduct had deserved well of the state. To do this was expressed by the phrase, "in beneficiis ad ærarium deferre,"—"to give into the treasury the names of deserving persons;" and in the case of certain officers and persons, this was to be done within thirty days after the proconsul, &c. had given in his accounts. The object of this practice was apparently to recommend such individuals to public notice and attention, and in many cases it would be a kind of introduction to future honours and emoluments. It does not seem quite certain if money was given to those thus recommended, in the time of Cicero. (Cicero, *Ad Divers.* v. 20; *Pro Archia*, 5.) Beneficium, in another sense, means some honour, promotion, or exemption from certain kinds of service, granted by a Roman governor or commander to certain of his soldiers, hence called Beneficiarii. (Cæsar, *De Bello Civili*, i. 75; iii. 88; Sueton. *Tiber.* 12.) Numerous inscriptions given in Gruter show how common this practice was: in some of them the title is represented by the initial letters B.F. only; Beneficiarius Legati Consularis (li. 4); B.F. Proconsulis (cxxx. 5), &c. Under the emperors, beneficia appear to have signified any kind of favours, privileges, or emoluments granted to a subject by the emperor; and Suetonius observes (*Titus*, 8) that all the Cæsars, in conformity with a regulation of Tiberius, considered that, on their accession to the supreme power, all the grants (beneficia) of their predecessors required confirmation; but Titus, by one edict, without solicitation, confirmed all grants of previous emperors. The grants made by the emperors, which were often lands, were entered in a book called the Liber Beneficiorum, which was kept by the chief clerk of benefices, under the care of the Comes Rerum Privatarum of the emperor; or it was kept by a person entitled "A Commentariis Beneficiorum," or clerk of the benefices, as we learn from a curious inscription in Gruter (DLXXVIII. 1). This inscription, which is a monumental inscription, is in memory of M. Ulpius Phædimus, who, among other offices, held that of clerk of benefices to Trajan: the mónument was erected in the reign of Hadrian, A.D. 131, by Valens Phædimianus, probably one of the same family, who styles himself wardrobe-keeper (a veste).

Beneficium, in the civil law, signifies any particular privilege: thus it is said (*Dig.* i. 4. 3) that the beneficium of the emperor must be interpreted very liberally; and by the Julian law *De bonis Cedendis* a debtor, whose estate was not sufficient to satisfy the demands of his creditors, was said to receive the benefit (beneficium) of this law so far, that he could not be taken to prison after judgment obtained against him. (*Codex*, vii. tit. 71, s. 1. 4.)

Beneficium, among the writers of the middle ages, signified any grant of land from the fiscus, that is, the private possessions of the king or sovereign, or any other person, for life; so called, says Ducange, because it was given out of the mere good will (beneficium) and liberality of the granter. But it is evident, from what we have said, that this kind of grant was so called after the fashion of the grants of the Roman emperors. A beneficiary grant in the middle ages appears to have been properly a grant for life, that is, a grant to the individual, and

Where the impropriation or appropriation of the great tithes is shared between owners of different classes, it is included under each class.

There are some few cases of rectories in which the rector has only a portion of the great tithes, the remainder being the property of a spiritual person or body, or of a lay impropriator; and in Jersey and Guernsey the benefices are merely nominal rectories, the incumbent not being entitled in any case to more than a portion (generally one-third) of the great tithes, the Crown or governor taking the residue; and in some cases the whole goes to the Crown or governor.

accordingly corresponds to *usufructus*, and is opposed to *proprietas*. The name beneficium, as applied to a feudal grant, was afterwards changed for that of feudum, and, as it is asserted, not before the sixth century; the terms beneficium and feudum are often used indifferently in writings which treat of feuds. [FEUD.] The English term Benefice signifies some church living or preferment. [BENEFICE.] For further remarks on the term beneficium, see Ducange, *Glossarium*, &c.; and Hotman, *Commentarius Verborum Juris*, *Opera*, Lugd. fol. 1599.

BENEFIT OF CLERGY. The privilege or exemption thus called had its origin in the regard which was paid by the various princes of Europe to the early Christian Church, and in the endeavours of the popes to withdraw the clergy altogether from secular jurisdiction. In England, these attempts, being vigorously resisted by our earlier kings after the Conquest, only succeeded partially and in two particular instances, namely, in procuring, 1. the exemption of places consecrated to religious purposes from arrests for crimes, which was the origin of sanctuaries [SANCTUARY]; and 2. the exemption of clergymen in certain cases from criminal punishment by secular judges. From the latter exemption came the benefit of clergy, which arose when a person indicted for certain offences pleaded that he was a clerk, or clergyman, and claimed his *privilegium clericale*. Upon this plea and claim the ordinary appeared and demanded him; a jury was then summoned to inquire into the truth of the charge, and according to their verdict the accused was delivered to the ordinary either as *acquit* or *convict*, to undergo canonical purgation, and then to be discharged or punished according to the result of the purgation. This privilege, however, never extended to high treason nor to offences not capital, and wherein the punishment would not affect the life or limb of the offender (*quæ non tangunt vitam et membrum*). It is singular that previously to the statute 3 & 4 Will. III., which expressly includes them, this privilege of clergy never extended by the English law to women, although it is clear that, by the canon law, nuns were exempted from temporal jurisdiction.

In earlier periods of the history of this privilege in England, the benefit of clergy was not allowed unless the prisoner appeared in his clerical habit and tonsure to claim it; but in process of time, as the original object of the privilege was gradually lost sight of, this ceremony was considered unnecessary, and the only proof required of the offender's clergy was his showing to the satisfaction of the court that he could read, a rare accomplishment, except among the clergy, previously to the 15th century. The consequence was, that at length all persons who could read, whether clergymen or lay clerks, as they were called in some antient statutes, were admitted to the benefit of clergy in all prosecutions for offences to which the privilege extended. The mode in which this test of reading was applied is thus described by Sir Thomas Smith, in his 'Commonwealth of England,' written in 1565. "The bishop," says he, "must send one with authority under his seal to be a judge in that matter at every gaol delivery. If the condemned man demandeth to be admitted to his book, the judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth so well as he can (God knoweth sometime very slenderly), then he (the judge) asketh of the bishop's commissary, *Legit ut clericus?* The commissary must say *legit* or *non legit*, for these be words formal, and our men of law be very precise in their words formal, If he say *legit*, the judge proceedeth no further to sentence of death; if he say *non*, the judge forthwith proceedeth to sentence."

The clergy, however, do not appear to have universally admitted that the mere fact of a prisoner's ability to read was to be taken as a conclusive proof of his clerical character. A curious case is recorded in the *Year Book*, 34 Hen. VI. 49 (1455), which greatly puzzled the judges. A man indicted of felony claimed the benefit of clergy; upon which the archdeacon of Westminster Abbey was sent for, who showed him a book, in which the felon read well and fluently. Upon hearing this, the court ordered him

to be delivered to the archdeacon on behalf of the ordinary, but the archdeacon refused to take him, alleging that the prisoner was not a clerk. This raised a serious difficulty; and the question was one of particular importance to the prisoner, as the judges deliberated whether he must not of necessity be hanged. He was, however, remanded to prison, and the subject was much discussed by the judges for several terms; but, luckily for the culprit, the conscientious archdeacon being removed, his successor heard the prisoner read, and consented to receive him; whereupon he was delivered to the ordinary, the judges saying "that *in favorem vitæ et libertatis ecclesiæ*, even where a man had once failed to read, and had received sentence of death, they would allow him his benefit of clergy, under the gallows, if he could then read, and was received by the ordinary." Another case is recorded in the 21st year of Edw. IV. (1481), in which a felon read well and audibly in the presence of the whole eourt; but the ordinary declared "*non legit ut clericus* for divers considerations." Upon which judgment was given that he should be hanged; "And so," says the reporter, "he was *ut audivi*." (*Year Book*, 21 Edw. IV. 21.) But though a felon might claim the benefit of clergy to the last moment of his life, it was an indictable offence to teach him to read for the purpose of saving him. Thus in the 7th Richard II. (1383), the vicar of Round Church in Canterbury was arraigned and tried, "for that by the licence of the jailer there, he had instructed in reading one William Gore, an approver, who at the time of his apprehension was unlearned (*ineruditus in lecturâ*)." (Dyer's *Reports*, p. 206.) It may readily be conceived that questions between the temporal courts and the ordinary would arise as the art of reading became more generally diffused; and it was probably on this account that an express provision was made by the legislature in order in some degree to obviate the occurrence of such difficulties. The statute 4 Henry VII. c. 13 (1488), revived the distinction between actual clergymen and such persons as had accidentally acquired a competent skill in reading, by providing that no person once admitted to the benefit of clergy should a second time be allowed the same privilege, unless he produced his orders; and to mark those who had once claimed the privilege, the statute enacted that all persons, not in orders, to whom it was so allowed, should be marked upon the "brawn of the left thumb" in the court, before the judge, before such person was delivered to the ordinary. After the offender was thus burned in the hand, he was formally delivered to the ordinary, to be dealt with according to the ecclesiastical canons, and to make purgation by undergoing the farce of a canonical trial. This second trial took place before the bishop or his deputy: there was a jury of twelve persons, who gave their verdict on oath; witnesses were examined on oath; the prisoner answered on oath; and twelve compurgators swore that they believed him. On this occasion, though the prisoner had been convicted at common law by the clearest evidence, or had even confessed his guilt, he was almost invariably acquitted. The whole proceeding before the ordinary is characterised by Chief Justice Hobart, at the beginning of the seventeenth century, "as turning the solemn trial of truth by oath into a ceremonious and formal lie." (Hobart's *Reports*, p. 291.) To remove this discreditable abuse of the forms of justice, the statute 18 Eliz. c. 7, enacted that in all cases after an offender had been allowed his clergy, he should not be delivered to the ordinary, but be at once discharged by the court, with a provision that he might be detained in prison for any time not exceeding a year, at the discretion of the judge before whom he was tried.

By various statutes passed in the course of the last century, the court before which an offender was tried and admitted to his clergy were empowered to commute the burning in the hand for transportation, imprisonment, or whipping; and subsequently to the passing of these statutes it is believed that no instance has occurred of a convict being burned in the hand.

The practice of calling upon a convicted person to read in order to prove to the court his title to the benefit of clergy continued until a comparatively late period. A case is mentioned in Kelynge's

Reports, p. 51, which occurred in 1666, where the bishop's commissary had deceived the court by reporting, contrary to the fact, that a prisoner could read; upon which Chief Justice Kelynge rebuked him severely, telling him "that he had unpreached more that day than he could preach up again in many days," and fined him five marks. At length the statute of the 5th of Anne, c. 6, enacted that the benefit of clergy should be granted to all those who are entitled to it without requiring them to read; and thus the "idle ceremony of reading," as Mr. Justice Foster justly terms it, was finally abolished.

The absurd and perplexing distinctions which the continuance of this antiquated and worn-out clerical privilege had introduced, having become extremely detrimental to the due administration of justice, it was enacted by one the recent statutes for the consolidation and improvement of the criminal law, commonly called Peel's Acts (namely, 7 & 8 Geo. IV. c. 28, § 6, for England, and 9 Geo. IV. c. 54, § 12, for Ireland), that benefit of clergy with respects to persons convicted of felony shall be abolished. Since the passing of this statute, the subject is of no practical importance whatever; but those who may be inclined to pursue it as a matter of historical curiosity may find the following references useful:—Blackstone's *Commentaries*, vol. iv. chap. 28: Hale's *Pleas of the Crown*, part ii. c. 45; Barrington's *Observations on Ancient Statutes*; Hobart's *Reports*, p. 288.

BENEVOLENCE, a species of forced loan or gratuity, and one of the various arbitrary modes of obtaining supplies of money, which, in violation of Magna Charta, were formerly resorted to by the kings of England. The name implies a free contribution, with or without the condition of repayment; but so early as the reign of Edward IV. the practice had grown into an intolerable grievance. That king's lavish liberality and extravagance induced him to levy benevolences very frequently; and one of the wisest and most popular acts of his successor, Richard III., was to procure the passing of a statute (cap. 2) in the only parliament assembled during his reign, by which benevolences were declared to be illegal; but this statute is so expressed as not clearly to forbid the solicitation of voluntary gifts, and Richard himself afterwards violated its provisions. Henry VII. exacted benevolences, which were enforced in a very oppressive way. Archbishop Morton, who solicited merchants and others to contribute, employed a piece of logic which obtained the name of "Morton's fork." He told those who lived handsomely, that their opulence was manifested by their expenditure; and those who lived economically, that their frugality must have made them rich: so that no class could evade him. Cardinal Wolsey, among some other daring projects to raise money for Henry VIII., proposed a benevolence, which the citizens of London objected to, alleging the statute of Richard III.; but the answer was, that the act of an usurper could not oblige a lawful sovereign. Elizabeth also "sent out her privy seals," for so the circulars demanding a benevolence were termed; but though individuals were committed to prison for refusing to contribute, she repaid the sums exacted. Lord Coke, in the reign of James I., is said to have at first declared that the king could not solicit a benevolence, and then to have retracted his opinion, and pronounced upon its legality.

The subject underwent a searching investigation during the reign of Charles I., as connected with the limitation of the king's prerogative. That king had appointed commissioners for the collection of a general loan from every individual, and they had private instructions to require not less than a certain proportion of each man's property in land or goods, and had extraordinary powers given them. The name of loan given to this tax was a fiction which the most ignorant could not but detect. Many of the common people were impressed to serve in the navy for refusing to pay; and a number of the gentry were imprisoned. The detention of five knights, who sued the Court of King's Bench for their writ of Habeas Corpus, gave rise to a most important question respecting the freedom of English subjects from arbitrary arrest, and out of the discussion which then arose, and the

contests respecting the levying of ship-money, &c., came the distinct assertion and ultimate establishment of the great principle of English liberty. The 13 Car. II. stat. 1, cap. 4, provides for a voluntary present to his majesty, with a proviso, however, that no aids of that nature can be but by authority of parliament. The Bill of Rights, in 1688, repeats what Magna Charta declared in 1215, that levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time or in any other manner than the same is or shall be granted, is illegal.

(Hallam's *Constitutional History of England*, and Turner's *History of England.*)

BETROTHMENT. We sometimes hear of parties being *betrothed* to each other, which means that each has pledged his or her *troth* or *truth* to the other, to enter at some convenient time, fixed or undetermined, into the state of matrimony. It now has seldom any other meaning than that the parties have engaged themselves privately, sometimes, though it is presumed very rarely, in the presence of one or more friends, who might, if necessity of doing so arose, bear testimony to such an engagement having been entered into. Even the rustic ceremonies which heretofore were in use, to give some kind of formality to such contracts, seem almost to have fallen into entire disuse. In ancient times, however, there were engagements of this kind of a very formal nature, and they were not thought unworthy the notice of the great legislators of antiquity. In the laws of Moses there are certain provisions respecting the state of the virgin who is betrothed. In the Roman law, the "sponsalia," or betrothment, is defined to be a "promise of a future marriage." Accordingly Sponsa signifies a woman promised in marriage, and Sponsus a man who is engaged to marry. Sponsalia could take place after the parties were seven years of age. There was no fixed time after betrothment at which marriage necessarily followed, but it might for various reasons be deferred for several years. The sponsalia might be made without the two parties being present at the ceremony. (*Digest*, xxiii. tit. i.)

The canonists speak of *betrothing* and of *marrying*, describing the former as being sponsalia, or espousals, with the *verba de futuro*, the latter with the *verba de præsenti*. In England there is no doubt that formal engagements of this kind were usual down to the time of the Reformation. One class of the documents which have descended in the families who have been careful in the preservation of their ancient evidences, are marriage-contracts, which are generally between parents, and set out with stating that a marriage shall be solemnized between certain parties when they attain to a certain age, or at some distant period, as after six months or a year; and amongst the terms of the contract it is not unusual to find stipulations respecting the apparel of the future bride, and the cost of the entertainment which is to be provided on the occasion. When these contracts were entered into by the parents, there is reason to believe that the younger parties solemnly plighted their troth to each other.

At the present day marriage settlements are generally made when the future husband or wife has property, or when both of them have property. The object of the settlement is to secure provision for the children who may be born of the marriage, and generally to make such disposition of the property of the man and of the woman as may have been agreed on. Such settlements always begin by reciting that a marriage between the parties therein mentioned is intended, which is in effect a contract of marriage.

The late Mr. Francis Douce, who was very learned in all matters relating to the popular customs of our own and other nations, describes the ceremony of betrothment (*Illustrations of Shakspeare and of Ancient Manners*, vol. i. p. 108), as having consisted in "the interchangement of rings—the kiss—the joining of hands; to which is to be added the testimony of witnesses." In France, where the ceremony is known by the name of *fiançailles*, the presence of the curé, or of a priest commissioned by him, was essential to the completeness of the contract. In England such contracts were brought under the cognizance of the ecclesiastical law. Complaints are made by a writer

about the time of the Reformation, cited in Ellis's edition of Brand's *Popular Antiquities*, that certain superstitious ceremonies had become connected with these engagements; but Mr. Douce was unable to find in any of the ancient rituals of the church any prescribed form in which this kind of espousals were to be celebrated. The church, however, undertook to punish the violation of the contract. Whoever after betrothment refused to proceed to matrimony, *in facie ecclesiæ*, was liable to excommunication till relieved by public penance. This was taken away by act 26 Geo. II. c. 33, and the aggrieved party was left to seek his remedy by an action at common law for breach of promise of marriage. The church also declared that no kind of matrimonial engagement could be entered into by infants under seven years of age; and that from seven to twelve, and in the case of males to fourteen, they might betroth themselves, but not to be contracted in matrimony. Further, if any betrothment at all took place, it was to be done openly, and this the priests were instructed to urge upon the people as of importance.

Bishop Sparrow (*Rationale on the Common Prayer*, p. 203) regards the marriage service of the Church of England as containing in it both the *verba de futuro* and the *verba de præsenti*, or as being in fact both a betrothment and a marriage. The first he finds in the questions, "*Wilt* thou take," &c., and the answers, "I *will*,"—attributing to the word *will*, perhaps erroneously, the sense of *intention* rather than of *resolution*. The words of contract which follow are the *verba de præsenti*.

The northern nations, including the English and the Scotch, called this ceremony by the expressive term *hand-fasting*, or *hand-fastning*. In Germany the parties are called respectively "bride" and "bridegroom," "braut" and "bräutigam," from the time of the betrothment (verlobung) until the marriage, when these designations cease.

BIGAMY, in the canon law, signified either a second marriage with a virgin after the death of the first wife, or a marriage with a widow. It incapacitated men for holy orders; and until the 1 Edw. VI. c. 12, § 16, it was a good counterplea to the claim of benefit of clergy. (Woodesson's *Vinerian Lectures*, i. 425.) The word bigamy, which simply signifies "a second marriage," is an irregular compound, formed of the Latin word *bi* (two), and the Greek γαμ (gam), "marriage." The genuine Greek word is *digámia* (διγαμία).

Bigamy, by the English law, consists in contracting a second marriage during the life of a former husband or wife, and the statute 1 James I. c. 11, enacts that the person so offending shall suffer death, as in cases of felony. (Hale's *Pleas of the Crown*, i. 692, fol. ed. 1736.) This statute makes certain exceptions, which it is not necessary to refer to, as it has been repealed by 9 George IV. c. 31, § 22, for England, and 10 Geo. IV. c. 34, § 26, for Ireland, and operates only with respect to offences committed on or before the 30th of June, 1828. The statute last cited enacts, "That if any person being married shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England or elsewhere, such offender and any person aiding him shall be guilty of felony and be punished by transportation for seven years, or by imprisonment (with or without hard labour) for a term not exceeding two years." The statute excepts, first, any second marriage contracted out of England by any other than a subject of his Majesty; second, any person whose husband or wife shall have been continually absent during seven years, and shall not have been known by such person to have been living within that time; third, a person divorced from the bond of the first marriage; fourth, one whose former marriage shall have been declared void by the sentence of any court of competent jurisdiction.

With respect to the third exception, it was determined in a case tried under the stat. 1 James I. c. 11, where a Scotch divorce *a vinculo* was pleaded, that no sentence of any foreign court can dissolve an English marriage *a vinculo*, unless for grounds on which it was liable to be so dissolved in England; and that the words "divorced by any sentence in the ecclesiastical court" (the words of the statute

of James) applied to the sentence of a spiritual court within the limits to which the statute extended. The fourth exception cannot be taken advantage of, if the first marriage has been declared void only collaterally and not directly; or if admitting it to be conclusive, it can be shown to have been obtained fraudulently or collusively. See MARRIAGE and DIVORCE; and the trial of the Duchess of Kingston before the peers in parliament, in 1776, for bigamy. (Bacon's *Abridgment* by Dodd, titles, "Bigamy" and "Marriage.")

The offence of bigamy consists in going through the form of a second marriage while the first subsists, for the second marriage is only a marriage in form, because a man cannot have two wives or a woman two husbands at once. The main ground for punishing a person who contracts such second marriage, ought to be the injury that is thereby done to the party who is deceived. Yet the law, with the absurd disregard of distinctions which is so common in the penal code of England, punishes in the same way all parties who knowingly contract such second marriage. For instance, if two married persons contract such marriage, they are both liable to the same penalty which is inflicted on a married man who contracts a second marriage with an unmarried woman who believes him to be unmarried. In the former case the two parties sustain no damage by the form; and, with respect to society, they stand pretty nearly on the same footing as two married persons who agree to commit adultery. The only difference is, that they also agree to pass for man and wife by virtue of the marriage ceremony. In the second case the man, by a base fraud, obtains the enjoyment of the woman's person, without running the risk of the penalty attached to the employment of force. As the offence of bigamy may then either be no damage to either of the parties, or a very great injury to one of them, this consideration should affect the amount of punishment.

BILL BROKER. [BROKER.]

BILL CHAMBER, a department of the Court of Session in Scotland, in which one of the judges officiates at all times during session and vacation. The youngest judge is lord ordinary on the bills during session; the duty is performed by the other judges, with the exception of the two presidents, by weekly rotation during vacation. All proceedings for summary remedies, or for protection against impending proceedings, commence in the Bill Chamber—such as interdicts (or injunctions against courts exceeding their jurisdiction), a procedure which frequently occurred during the recent discussion in the Church of Scotland as to the veto question; suspensions of execution against the property or person, &c. The process of sequestration or bankruptcy issues from this department of the court. By far the greater number of the proceedings are sanctioned by the judge as a matter of form, on the clerks finding that the papers presented ask the usual powers in the usual manner; but where a question of law is involved in the application, it comes into the Court of Session, and is discussed as an ordinary action. The Lord Ordinary on the bills is the representative of the court during vacation. A considerable proportion of his duties are regulated by 1 & 2 Vict. c. 86.

BILL IN CHANCERY. [EQUITY.]

BILL IN PARLIAMENT is the name given to any proposition introduced into either house for the purpose of being passed into a law, after which it is called an act of parliament, or statute of the realm. [ACT; STATUTE.]

In modern times a bill does not differ in form from an act, except that when first brought in it often presents blanks for dates, sums of money, &c., which are filled up in its passage through the house. When printed, also, which (with the exception only of naturalization and name bills, which are not printed) it is always ordered to be, either immediately after it has been read a first time, or at some other early stage of its progress, a portion of it, which may admit of being disjoined from the rest, is sometimes distinguished by a different type. But most bills are several times printed in their passage through the two houses. A bill, like an act, has its title, its preamble, usually setting forth the reasons upon which it professes to be founded, and then its series

of enacting clauses, the first beginning with the words—"Be it enacted by the King's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same;"—and each of those that follow with the more simple formula—"And be it further enacted." The advantage of this is, that a bill when made perfect by all its blanks having been filled up, becomes a law at once, without further alteration or remodelling, on receiving the royal assent.

Originally, the bills passed by the two houses were introduced in the form of petitions, and retained that form when they came to receive the royal assent. [PETITION.] The whole of those passed in one session were then, after the parliament rose, submitted to the judges, to be by them put into the proper shape of a law. They were then entered on the Statute Rolls. But it was found that in undergoing this process the acts, as passed by the parliament, were frequently both added to and mutilated. Indeed a great deal of the power of making the law was thus left in the hands of the judges, and of the royal authority, in so far as these learned personages might be under its influence. The Commons remonstrated, reminding the king that they had ever been "as well assenters as petitioners." To remedy this usurpation it was arranged in the 2 Henry V., that the statute roll of the session should always be drawn up before the parliament rose, or as the king said, "that henceforth nothing should be enacted to the petitions of the Commons contrary to their asking, whereby they should be bound without their assent." In the following reign, that of Henry VI., the bill came as now to be prepared in the form of an act, and to receive the distinct assent of the king in the form in which both houses had agreed to it. Mr. May however states (*Usages, &c. of Parliament*) that both Henry VI. and Edward IV. now and then made new provisions in statutes without the sanction of parliament; "but the constitutional form of legislating by bill and statute, agreed to in parliament, undoubtedly had its origin and its sanction in the reign of Henry VI." (p. 270).

Bills are either public or private. In the introduction of a public bill the first motion made in the House of Lords is that the bill be brought in; but in the House of Commons the member who purposes to introduce the bill must first move that leave be given to bring it in. If that motion is carried, the bill is then either ordered to be brought in by certain members, generally not more than two, of whom the mover is one, or a select committee is appointed for that purpose. When the bill is ready, which it frequently is as soon as the motion for leave to bring it in has been agreed to, it is presented at the bar by one of those members, and afterwards, upon an intimation from the speaker, brought up by him to the table. The next motion is that it be read a first time; and this motion is most frequently made immediately after the bill has been brought up. This being carried, a day is appointed for considering the question that the bill be read a second time. The second reading being carried, it is next moved that the bill be committed, that is, that it be considered clause by clause, either in a committee of the whole house, or, if the matter be of less importance, in a select committee. When the committee have finished their labours, they make their report through their chairman; and the next motion is that the report be received. Besides modifying the original clauses of the bill, it is in the power of the committee, if they think proper, both to omit certain clauses and to add others. Sometimes a bill is ordered to be re-committed, that it may undergo further consideration, or that additional alterations may be made in it. The report of the committee having been received, the next motion is that the bill be read a third time, and when that is carried, there is still a further motion, that the bill do pass. When a bill has passed the House of Lords, it is sent down to the House of Commons by two of the masters in chancery, or if only one is present he is accompanied by the clerk assistant of the parliament; and if the bill concerns the crown or royal family, it is sent down by two of the judges. The

messengers make their obeisances as they advance to the speaker, and, after one of them has read the title of the bill, deliver it to him, desiring that it may be taken into consideration. When an ordinary bill is not sent to the Commons by two of the masters in chancery, the messengers are directed to explain this deviation from the established rules; and in their reply the Commons "trust the same will not be drawn into a precedent for the future." When a bill, on the other hand, is sent up from the Commons to the Lords, it is sent by several members (the Speaker being frequently one), who, having knocked at the door of the Lords' House, are introduced by the usher of the black rod, and then advance to the bar, making three obeisances. The Speaker of the house, who is usually the lord chancellor, then comes down to the bar, and receives the bill, the members who deliver it to him stating its title, and informing him that it is a bill which the Commons have passed, and to which they desire the concurrence of their lordships. A bill thus received by the one house from the other is almost always read a first time; but it does not appear to be a matter of course that it should be so read. It then goes again through the same stages as it has already passed through in the other house.

The bill may be debated on any one of the motions which we have mentioned, and it commonly is so debated more than once. It is usual, however, to take the debate upon the principle of the proposed measure either on the motion for leave to bring in the bill, or on that for the second reading: the details are generally discussed in the committee. Amendments upon the bill, going either to its entire rejection, or to its alteration to any extent, may be proposed on any occasion on which it is debated after it has been brought in. Before it is committed also, certain instructions to the committee may be moved, upon which the committee must act.

After the report of the committee has been received, and the amendments which it purposes agreed to, the Speaker puts the question that the bill so amended be ingrossed; that is to say, written in a distinct and strong hand on parchment. If this shape it remains till it receives the royal assent; it is not ingrossed a second time in the other house. 'When a bill originates in the Lords, it is ingrossed after the report, and is sent to the Commons in that form; and when it begins in the Commons, the time for ingrossing the bill before it is sent up to the Lords is also after the report.' (May's *Parliament*, p. 284.) Whatever clauses are afterwards added are called *riders*, and must be ingrossed on separate sheets of parchment and attached to it.

Bills of all kinds may originate in either house, except what are called money bills, that is, bills for raising money by any species of taxation, which must always be brought first into the House of Commons. The Commons also will reject any amendment made upon a money bill by the Lords. And the Lords have a standing order (the XC., dated 2nd of March, 1664) against proceeding with any bill for restitution in blood which shall not have originated in their own house: all such acts, and all others of royal grace and favour to individuals, are signed by the king before being laid before parliament, where they are only read once in each house, and cannot be amended, although they may be rejected. [ASSENT, ROYAL.]

When a bill has passed the Commons and is to be sent up to the Lords, the clerk of the Commons writes upon it *Soit baillé aux Seigneurs;* and upon one which has passed the Lords and is to be sent down to the Commons, the clerk of the Lords writes *Soit baillé aux Communs.* If it is afterwards passed by the Commons, the clerk writes upon it *Les Communs ont assentez.* All bills of supply, after being passed by the Lords, are returned to the House of Commons, in which they had originated, and there remain till they are brought to the House of Lords by the Speaker to receive the royal assent: all other bills are deposited with the clerk of the enrolments in the House of Lords till the royal assent is given to them.

A bill, after it has been introduced, may be lost either by the royal assent being refused (of which, however, there

is no instance in recent times), or by a motion for its rejection being carried in any of its stages in its passage through either house, or by any of the motions necessary to advance it on its progress being dropped or withdrawn. The rejection of the bill may be effected by the motion in its favour being simply negatived, or by a counter-motion being carried to the effect that the next reading be deferred till a day by which it is known that parliament will have been prorogued (generally till that day six months, or that day three months), or by the carrying of an amendment entirely opposed to the measure. The motion for carrying it forward on any of its stages may be dropped either by the house not assembling on the day for which the order made respecting that motion stands, or simply by no member appearing to make the motion. When a motion has once been made, it can only be withdrawn by consent of the house.

If a bill has been lost in any of these ways, the rule is that the same measure cannot be again brought forward the same session. There are, however, several remarkable examples of the regulation being entirely disregarded; and sometimes a short prorogation has been made merely to allow a bill which had been defeated to be again introduced.

When a bill which has passed one house has been amended in the other, it must be returned, with the amendments, to be again considered in the house from which it had come; and it cannot be submitted for the royal assent until the amendments have been agreed to by that house. In case of a difference of opinion between the two houses, the rules of proceeding between the two houses, according to Mr. May (*Usage, &c. of Parliament*, p. 255), are as follows:—"Let it be supposed that a bill sent up from the Commons has been amended by the Lords and returned; that the Commons disagree to their amendments, draw up reasons, and desire a conference; that the conference is held, and the bill and reasons are in possession of the House of Lords. If the Lords should be satisfied with the reasons offered, they do not desire another conference, but send a messenger to acquaint the Commons that they do not insist upon their amendments. But if they insist upon the whole or part of their amendments, they desire another conference, and communicate the reasons of their perseverance." The usage of parliament precludes a third conference, and to proceed further a free conference is requisite. Here, instead of a formal communication of reasons, the proceedings partake of the nature of a debate: if neither Lords nor Commons give way at this conference, there is little prospect of terminating the disagreement; but a second free conference may be held if the house in possession of the bill resolves upon making concessions. It may be added that the almost uniform practice in both houses, when it is intended not to insist upon the amendments, has been to move affirmatively "to insist," and then to negative that question. (Hatsell, *Precedents;* May, *Usage, &c. of Parliament.*)

According to the standing orders of the House of Lords (see Order CXCVIII. of 7th of July, 1819), no bill regulating the conduct of any trade, altering the laws of apprenticeship, prohibiting any manufacture, or extending any patent, can be read a second time until a select committee shall have inquired into and reported upon the expediency of the proposed regulations. By the standing orders of the Commons no bill relating to religion or trade can be brought into the house until the proposition shall have been first considered and agreed to in a committee of the whole house; and the house will not proceed upon any bill for granting any money, or for releasing or compounding any sum of money owing to the crown, but in a committee of the whole house. No bill also can pass the house affecting the property of the crown or the royal prerogative without his Majesty's consent having been first signified.

Private bills are such as directly relate only to the concerns of private individuals or bodies of individuals, and not to matters of state or to the community in general. In determining on their merits Parliament exercises judicial as well as legislative functions. In some cases it might be doubtful whether an act ought to be considered a public or a private one; and in these cases a clause is

commonly inserted at the end of the act to remove the doubt. Private bills in passing into laws go through the same stages in both houses of parliament with public bills: but relating as they do for the most part to matters as to which the public attention is not so much alive, various additional regulations are established with regard to them, for the purpose of securing to them in their progress the observation of all whose interests they may affect. No private bill, in the first place, can be introduced into either house except upon a petition stating its object and the grounds upon which it is sought; nor can such petitions be presented after a certain day in each session, which is always fixed at the commencement of the session, and is usually within a fortnight or three weeks thereafter. In all cases the necessary documents and plans must be laid before the house before it will proceed in the matter, and it must also have evidence that sufficient notice in every respect has been given to all parties interested in the measure. To a certain extent the consent of these parties is required before the bill can be passed. For the numerous rules, however, by which these objects are sought to be secured, we must refer to the Standing Orders themselves.

An important respect in which the passage through parliament of a private bill differs from that of a public bill is the much higher amount of fees paid in the case of a private bill to the clerks and other officers of the two houses. Although the high amount of the fees payable on private bills has been the subject of much complaint, and is undoubtedly, in some cases, a very heavy tax, it is to be remembered that the necessary expense of carrying the generality of such bills through parliament must always be very considerable, so long as the present securities against precipitate and unfair legislation shall be insisted on. The expenses of agency, of bringing up witnesses, and the other expenses attending the making application to parliament for a private bill, at present often amount to many times as much as the fees. These fees, on the other hand, are considered to be some check upon unnecessary applications for private bills, with which it is contended that parliament would otherwise be inundated. The misfortune is, that it is not the most unnecessary applications which such a check really tends to prevent, but only the applications of parties who are poor, which may be just as proper to be attended to as those of the rich.

BILL OF EXCHANGE. [Exchange, Bill of.]

BILL OF EXCHEQUER. [Exchequer Bill.]

BILL OF HEALTH. [Quarantine.]

BILL OF LADING, an acknowledgment signed usually by the master of a trading ship, but occasionally by some person authorised to act on his behalf, certifying the receipt of merchandise on board the ship, and engaging, under certain conditions and with certain exceptions, to deliver the said merchandise safely at the port to which the ship is bound, either to the shipper, or to such other person as he may signify by a written assignment upon the Bill of Lading.

The conditions stipulated on behalf of the master of the ship are, that the person entitled to claim the merchandise shall pay upon delivery of the same a certain specified amount or rate of freight, together with allowances recognised by the customs of the port of delivery, and known under the names of primage and average. Primage amounts in some cases to a considerable per centage (ten or fifteen per cent.) upon the amount of the stipulated freight, but the more usual allowance under this head is a small fixed sum upon certain packages; *e. g.* the primage charge upon a hogshead of sugar brought from the West Indies to London is sixpence. This allowance is considered to be the perquisite of the master of the ship. Average, the claim for which is reserved against the receiver of the goods, consists of a charge divided *pro rata* between the owners of the ship and the proprietors of her cargo for small expenses (such as payments for towing and piloting the ship into or out of harbours), when the same are incurred for the general benefit.

The exceptions stipulated on behalf of

the shipowners are explained on the face of the Bill of Lading, and are "the act of God, the king's enemies, fire, and all and every other danger and accidents of the seas, rivers, and navigation, of whatever nature and kind soever excepted." In every case where shipments are made from this country, one at least of the bills of lading must be written upon a stamp of the value of sixpence. One of the bills (unstamped) is retained by the master of the ship, the others are delivered to the shippers of the goods, who usually transmit to the consignee of the goods one copy by the ship on board which they are laden, and a second copy by some other conveyance. In case the ship should be lost, when the goods are insured, the underwriters require the production of one of the copies of the Bill of Lading on the part of the person claiming under the policy of insurance as evidence at once of the shipment having actually been made, and of the ownership of the goods.

By the act 6 George IV. c. 94, § 2, it is declared "that any person in possession of a Bill of Lading shall be deemed the true owner of the goods specified in it, so as to make a sale or pledge by him of such goods or bill of lading valid, unless the person to whom the goods are sold or pledged has notice that the seller or pledger is not the actual and *bonâ fide* owner of the goods."

The property in the goods represented by a Bill of Lading can be assigned like a bill of exchange by either a blank or a special indorsement, and as, in the event of the first mode being used, the document might accidentally fall into improper hands—a fact which the master of a ship could not reasonably be expected to discover—it is manifestly only justice to shield him from responsibility when acting without collusion. Should he, on the other hand, act either negligently or collusively in the matter, the law will compel him to make good their value to the real owner of the goods.

The stamp duty received on bills of lading in Great Britain for 1843 was 19,518*l.*, and in Ireland 1973*l.* The duty in England and Scotland was reduced from 3*s.* to 6*d.* by 5 & 6 Vict. c. 79, and in Ireland the duty was reduced from 1*s.* 6*d.* to 6*d.* by 5 & 6 Vict. c. 82. Previous to this reduction, in 1841, the duty in Ireland produced only 1079*l.* The duty for England cannot be given, as the duty was applicable also to protests.

BILL OF RIGHTS is the name commonly given to the statute 1 William and Mary, sess. 2, chap. 2, in which is embodied the Declaration of Rights, presented by both Houses of the Convention to the Prince and Princess of Orange, in the Banqueting-House at Whitehall, on the 13th of February, 1689, and accepted by their Highnesses along with the crown. The Bill of Rights was originally brought forward in the first session of the parliament into which the Convention was transformed; but a dispute between the two Houses with regard to an amendment introduced into the bill by the Lords, naming the Princess Sophia of Hanover and her posterity next in succession to the crown after the failure of issue to King William, which was rejected in the Commons by the united votes of the high church and the republican parties, occasioned the measure to be dropped, after it had been in dependence for two months, and the matter of difference had been agitated in several conferences without effect. The bill was however again brought on immediately after the opening of the next session, on the 19th of October, 1689, and the amendment respecting the Princess Sophia not having been again proposed, it passed both houses, and received the royal assent in the same shape in which it had formerly passed the Commons, with the addition only of a clause inserted by the Lords, which enacted that the kings and queens of England should be obliged, at their coming to the crown, to take the test in the first parliament that should be called at the beginning of their reign, and that if any king or queen of England should embrace the Roman Catholic religion, or marry with a Roman Catholic prince or princess, their subjects should be absolved of their allegiance. This remarkable clause is stated to have been agreed to without any opposition or debate.

The Bill of Rights, after declaring the late king James II. to have done various

acts which are enumerated, utterly and directly contrary to the known laws and statutes and freedom of this realm, and to have abdicated the government, proceeds to enact as follows:—

1. That the pretended power of suspending of laws, or the execution of laws, by regal authority, without consent of parliament, is illegal. 2. That the pretended power of dispensing with laws, or the execution of laws, by regal authority, as it hath been assumed and exercised of late, is illegal. 3. That the commission for creating the late court of commissioners for ecclesiastical causes, and all other commissions and courts of the like nature, are illegal and pernicious. 4. That levying of money for or to the use of the crown, by pretence of prerogative, without grant of parliament, for longer time, or in other manner, than the same is or shall be granted, is illegal. 5. That it is the right of the subjects to petition the king, and all commitments and prosecutions for such petitioning are illegal. 6. That the raising or keeping of a standing army within the kingdom in time of peace, unless it be with consent of parliament, is against law. 7. That the subjects which are Protestants may have arms for their defence, suitable to their condition, and as allowed by law. 8. That election of members of parliament ought to be free. 9. That the freedom of speech, and debates or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament. 10. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. 11. That jurors ought to be duly empannelled and returned, and jurors which pass upon men in trials for high treason ought to be freeholders. 12. That all grants and promises of fines and forfeitures of particular persons, before conviction, are illegal and void. 13. And that for redress of all grievances, and for the amending, strengthening, and preserving of the laws, parliaments ought to be held frequently."

It is added that the Lords and Commons "do claim, demand, and insist upon all and singular the premises as their undoubted rights and liberties; and that no declarations, judgments, doings, or proceedings, to the prejudice of the people in any of the said premises, ought in anywise to be drawn hereafter into consequence or example."

The act also recognises their Majesties William III. and Mary as King and Queen of England, France, and Ireland, and the dominions thereunto belonging; and declares that the crown and royal dignity of the said kingdoms and dominions shall be held by their said majesties during their lives, and the life of the survivor of them; that the sole and full exercise of the regal power shall be only in and executed by King William, in the names of himself and her majesty, during their joint lives; and that after their decease the crown shall descend to the heirs of the body of the queen, and, in default of such issue, to the Princess Anne of Denmark and the heirs of her body, and, failing her issue, to the heirs of the body of the king.

The Declaration of Rights is understood to have been principally the composition of Lord (then Mr.) Somers, who was a member of the first and chairman of the second of two committees, on whose reports it was founded. The original draft of the Bill of Rights was also the production of his pen. In the latter especially there is very apparent a desire to preserve in the new arrangement as much as possible of the principle of the hereditary succession to the crown. The legislature, for instance, in strong terms expresses its thankfulness that God had mercifully preserved King William and Queen Mary to reign over them "upon the throne of their ancestors;" and the new settlement is cautiously designated merely "a limitation of the crown." Mr. Burke has, from these expressions, contended (in his 'Reflections on the Revolution in France') that the notion of the English people having at the Revolution asserted a right to elect their kings is altogether unfounded. "I never desire," he adds, in repudiation of the opposite opinion, as held by one class of persons professing Whig principles, "to be thought a better Whig than Lord Somers, or to understand the principles of the Revolution better than those by

whom it was brought about, or to read in the Declaration of Rights any mysteries unknown to those whose penetrating style has engraved in our ordinances and our hearts the words and spirit of that immortal law."

The Declaration and Bill of Rights may be compared with the Petition of Right which was presented by Parliament to Charles I. in 1628, and passed by him into a law. [PETITION OF RIGHT.]

BILL OF SALE, a deed or writing under seal, evidencing the sale of personal property. In general the transfer of possession is the best evidence of change of ownership, but cases frequently occur in which it is necessary or desirable that the change of property should be attested by a formal instrument of transfer; and in all cases in which it is not intended that the sale shall be followed by delivery, such a solemnity is essential to the legal efficacy of the agreement. The occasions to which these instruments are commonly made applicable are sales of fixtures and furniture in a house, of the stock of a shop, of the good-will of a business (which of course is intransferable by delivery), of an office, or the like. But their most important use is in the transfer of property in ships, which being held in shares, cannot, in general, be delivered over on each change of part ownership. It seems to have been from ancient times the practice, as well in this country as in other commercial states, to attest the sale of ships by a written document; and at the present day a bill of sale is, by the registry acts, rendered necessary to the validity of all transfers of shares in British ships, whether by way of sale or of mortgage.

BILL OF SIGHT is an imperfect entry of goods at the custom-house when the importer is not precisely acquainted with their nature or quantity. A Bill of Sight must be replaced by a perfect entry within three days after the goods are landed. (3 & 4 Wm. IV., c. 52, § 24.)

BILL OF STORE, a licence granted by the collectors and comptrollers of customs to ship stores and provisions free of duty for consumption and use during the voyage. (3 & 4 Vict. c. 52, § 33 and 34.)

BILLON, in coinage, is a composition of precious and base metal, consisting of gold or silver alloyed with copper, in the mixture of which the copper predominates. The word came to us from the French. Some have thought the Latin *bulla* was its origin, but others have deduced it from *vilis*. The Spaniards still call billon coin *Moneda de Vellon*.

BILLS OF MORTALITY are returns of the deaths which occur within a particular district, specifying the numbers that died of each different disease, and showing, in decennial or shorter periods, the ages at which death took place. The London Bills of Mortality were commenced in 1592, after a great plague. The weekly bills were begun in 1603, after another visitation of still greater severity. In London, a parish is said to be within the Bills of Mortality when the deaths occurring within it are supposed to be carried to account by the company of parish clerks. In 1605 the London Bills of Mortality comprised the ninety-seven parishes within the walls, sixteen parishes without the walls, and six contiguous out-parishes in Middlesex and Surrey. In 1626 Westminster was included; and in 1636 Islington, Lambeth, Stepney, Newington, and Rotherhithe. Other additions were made from time to time. The parishes of Marylebone, St. Pancras, Chelsea, and several others, which have become important parts of the metropolis within a recent period, were never included. At present the parishes supposed to be included in the Bills of Mortality comprise the City of London, the City and Liberties of Westminster, the Borough of Southwark, and thirty-four out-parishes in Middlesex and Surrey, the whole containing a population of about 1,350,000.

The manner of procuring returns of the number of deaths and causes of death, as described by Grant, in his 'Observations on the Bills of Mortality,' published in 1662, was as follows:—"When any one dies, then, either by tolling or ringing of a bell, or by bespeaking of a grave of the sexton, the same is known to the searchers corresponding with the said sexton. The searchers hereupon, who are ancient matrons sworn to their office, repair to the

place where the dead corpse lies, and by view of the same, and by other inquiries, they examine by what casualty or disease the corpse died. Hereupon they make their report to the parish clerk, and he, every Tuesday night, carries in an account of all the burials and christenings happening that week to the clerk at the Parish Clerks' Hall. On Wednesday the general account is made up and printed, and on Thursday published, and disposed to the several families who will pay four shillings per annum for them." Maitland, in his 'History of London,' says that the charter of the company of parish clerks strictly enjoins them to make a return of all the weekly christenings and burials in their respective parishes by six o'clock on Tuesdays in the afternoon; and that a bye-law was passed, changing the hour to two, in order "that the king and the lord mayor may have an account thereof the day before publication." The lord mayor, every week, transmitted a copy of the bill to the court. Pepys says, the Duke of Albermarle "shewed us the number of the plague this week, brought in last night from the lord mayor." In 1625 the company of parish clerks obtained a licence from the Star-Chamber for keeping a printing-press at their Hall for printing the bills. So recently as 1837 no improvement had taken place in the mode of collection, or in the value of the statistics of disease and mortality in the metropolis. On the death of an individual within the prescribed limits, intimation was sent to the *searchers*, to whom the undertaker or some relative of the deceased furnished the name and age of the deceased, and the malady of which he had died. No part of this information was properly authenticated, and it might be either true or false. The appointment of searcher usually fell upon old women, and sometimes on those who were notorious for their habits of drinking. The fee which these official characters demanded was one shilling, but in some cases *two* public authorities of this description proceeded to the inspection, when the family of the defunct was defrauded of an additional shilling. They not unfrequently required more than the ordinary fee; and owing to the circumstances under which they paid their visit, their demands were frequently complied with. In some cases they even proceeded so far as to claim as a perquisite the articles of dress in which the deceased died.

For some time before the Act for the Registration of Births, Deaths, &c. came into operation, the Bills of Mortality were of no value whatever. In fact they ceased to be of use after the last visitation of the plague. The inhabitants of London were no longer apprehensive of a sudden increase of deaths, and the Weekly Bills, once so anxiously regarded, and which, on the appearance of the plague, warned those who could afford it to leave town, sank into neglect. In 1832 the bills reported 28,606 deaths, and in 1842 only 13,142. In 1833, out of 26,577 deaths, the causes of decease were returned as unknown in 887 cases, being 1 in 30; and in 1842, out of 13,142 deaths reported, the cause of death was stated to be unknown in 4638 cases, or less than 1 in 3. 'Searchers' are no longer appointed; and the unscientific diagnosis given in the Bills is usually obtained from the undertaker or sexton at the funeral. Besides this, many of the parishes professedly included in the Bills of Mortality make no returns at all. St. George's, Hanover Square, ceased to send in an account of deaths in 1823. If all the deaths were returned which occur within the limits which the bills profess to comprise, the annual number would be about 33,000, instead of 13,142. In the week ending the 18th of November, 1843, the Bill of Mortality issued by the parish clerks "to the Queen's Most Excellent Majesty, and the Right Hon. the Lord Mayor," stated that "the decrease in the burials reported this week is 149." This very week, however, there was in reality rather an extraordinary increase of mortality, and, for the metropolis, the number of deaths exceeded the average by upwards of 300. In January, 1840, the registrar-general, under 6 & 7 Wm. IV. c. 86, commenced the publication of weekly Bills of Mortality, which are remarkable for their accuracy and their trustworthiness as statistics of disease. The 'cause' of death must be entered in the certificate

of interment, without which it is illegal to inter the body, and the minister officiating is liable to a penalty. The Registrar-General's Bill is now the only true bill; and why the old one should still be published, is only to be accounted for on the supposition that it is obligatory on the parish clerks by the terms of their charter. [REGISTRATION OF BIRTHS, &c.]

BISHOP, the name of that superior order of pastors or ministers in the Christian Church who exercise superintendency over the ordinary pastors within a certain district, called their see or diocese, and to whom also belongs the performance of those higher duties of Christian pastors, ordination, consecration (or dedication to religious purposes) of persons or places, and finally excommunication.

The word itself is corrupted Greek. Ἐπίσκοπος (*epíscopos*) became *episcopus* when the Latins adopted it. They introduced it among the Saxons, with whom, by losing something both at the beginning and the end, it became *piscop*, or, as written in Anglo-Saxon characters, Bꝑceop. This is the modern *bishop*, in which it is probable that the change in the orthography (though small) is greater than in the pronunciation. Other modern languages retain in like manner the Greek term slightly modified according to the peculiar genius of each, as the Italian, *vescovo;* Spanish, *obispo;* and French, *évêque;* as well as the German, *bischof;* Dutch, *bisschop;* and Swedish, *biskop.*

The word *episcopus* literally signifies "an inspector or superintendent;" and the etymological sense expresses even now much of the actual sense of the word. The peculiar character of the bishop's office might be expressed in one word—superintendency. The bishop is the overseer, overlooker, superintendent in the Christian Church, and an exalted station is allotted to him corresponding to the important duties which belong to his office. It was not, however, a term which was invented purposely to describe the new officer which Christianity introduced into the social system. The term existed before, both among the Greeks and Latins, to designate certain civil officers to whom belonged some species of superintendency. (See Harpocrat. or Suidas in voc. ἐπίσκοπος.) Cicero (*Ad Att.* lib. vii. ep. 11) speaks of himself as appointed an ἐπίσκοπος in Campania.

It has long been a great question in the Christian Church what kind of superintendency it was that originally belonged to the bishop. This question, as to whether it was originally a superintendency of pastors or of people, may be briefly stated thus:—Those who maintain that it was a superintendency of pastors challenge for bishops that they are an order of ministers in the Christian Church distinct from the order of presbyters, and standing in the same high relation to them that the apostles did to the ordinary ministers in the church; that, in short, they are the successors and representatives of the apostles, and receive at their consecration certain spiritual graces by devolution and transmission from them, which belong not to the common presbyters. This is the view taken of the original institution and character of the bishop in the Roman Catholic Church, in the English Protestant Church, and, we believe, in all churches which are framed on an episcopal constitution. Episcopacy is thus regarded as of divine institution, inasmuch as it is the appointment of Jesus Christ and the apostles, acting in affairs of the church under a divine direction. There are, on the other hand, many persons who contend that the superintendency of the bishop was originally in no respect different from the superintendency exercised by presbyters as pastors of particular churches. They maintain that, if the question is referred to Scripture, we there find that bishop and presbyter are used indifferently to indicate the same persons or class of persons; and that there is no trace in the Scriptures of two distinct orders of pastors; and that if the reference is made to Christian antiquity, we find no trace of such a distinction till about two hundred years after the time of the apostles. The account which they give of the rise of the distinction which afterwards existed between bishops and mere presbyters is briefly this:—

When in the ecclesiastical writers of the first three centuries we read of the

bishops, as of Antioch, Ephesus, Carthage, Rome, and the like, we are to understand the presbyters who were the pastors of the Christian churches in those cities. While the Christians were few in each city, one pastor would be sufficient to discharge every pastoral duty among them; but when the number increased, or when the pastor became enfeebled, assistance would be required by him, and thus other presbyters would be introduced into the city and church of the pastor, forming a kind of council around him. Again, to account for the origin of dioceses or rural districts which were under the superintendency of the pastors, it was argued that it was the cities which first received Christianity, and that the people in the country places remained for the most part heathens or pagans (so called from *pagus*, a country village) after the cities were Christianized; but that nevertheless efforts were constantly being made to introduce Christian truth into the villages around the chief cities, and that, whenever favourable opportunities were presented, the chief pastor of the city encouraged the erection of a church, and appointed some presbyter either to reside constantly in or near to it, or to visit it when his services were required, though still residing in the city, and there assisting the chief pastor in his ministrations. The extent of country which thus formed a diocese of the chief pastor would depend, it is supposed, on the civil distributions of the period; that is, the dioceses of the bishops of Smyrna, or any other ancient city, would be the country of which the inhabitants were accustomed to look to the city for the administration of justice, or in general to regard it as the seat of that temporal authority to which they were immediately subject.

All this is represented as having gone on without any infringement on the rights of the chief pastor, of whom there was a regular series. Lists of them are preserved in many of the more ancient churches, ascending, on what may be regarded sufficient historical testimony, and with few breaks in the continuity, even into the second and first centuries. Bishops are, however, found in churches for which this high antiquity cannot be claimed. In these cases they are supposed to be either in countries which did not fully receive Christianity in the very earliest times, or that the bishops or chief pastors delegated a portion of that superior authority which they possessed over the other presbyters to the presbyter settled in one of the churches which was originally subordinate. This is supposed to have been the origin of the distinction among the chief pastors of bishops and archbishops, there being still a slight reservation of superintendency and authority in the original over the newly created chief pastors.

If this view of the origin of the episcopal character and office be correct, it will follow that originally there was no essential difference between the bishop and the presbyter, and also that the duties which belong to the pastor of a Christian congregation were performed by the bishop. But when the increase of the number of Christians rendered assistants necessary, and this became a permanent institution, then the chief pastor would divest himself of those simpler and easier duties, which occasioned nevertheless a great consumption of time, as a matter at once of choice and of necessity. Having to think and to consult for other congregations beside that which was peculiarly his own, and to attend generally to schemes for the protection or extension of Christianity, he would have little time remaining for catechizing, preaching, baptizing, or other ordinary duties; and especially when it was added that he had to attend councils, and even was called to assist and advise the temporal governors in the civil and ordinary affairs of state. When Christianity, instead of being persecuted, was countenanced and encouraged by the temporal authorities, it was soon perceived that the bishop would be a very important auxiliary to the temporal authorities; while in ages when few besides ecclesiastical persons had any share of learning, or what we call mental cultivation, it is manifest that the high offices of state, for the performance of the duties of which much discernment and much information were required, must necessarily be filled by

ecclesiastics, who might be expected, as we know to have been the case, to unite spiritual pre-eminence with their high political offices. The Lord High Chancellor of England was always an ecclesiastic, and generally a bishop, to the time of Sir Thomas More, in the reign of Henry VIII.

The functions which belong to the bishop are in all countries nearly the same. We shall speak of them as they exist in the English Church. 1. Confirmation, when children on the threshold of maturity ratify or confirm the engagement entered into by their sponsors at baptism, which is done in the presence of a bishop, who may be understood in this ceremony to recognise or receive into the Christian church the persons born within his diocese. 2. Ordination, or the appointment of persons deemed by him properly qualified, to the office of deacon in the church, and afterwards of presbyter or priest. 3. Consecration of presbyters when they are appointed to the office of bishop. 4. Dedication, or consecration of edifices erected for the performance of Christian services or of ground set apart for religious purposes, as especially for the burial of the dead. 5. Administration of the effects of persons deceased, of which the bishop is the proper guardian, until some person has proved before him a right to the distribution of those effects either as the next of kin or by virtue of the testament of the deceased. 6. Adjudication in questions respecting matrimony and divorce. 7. Institution or collation to vacant churches in his diocese. 8. Superintendence of the conduct of the several pastors in his diocese, in respect of morals, of residence, and of the frequency and proper performance of the public services of the church. And, 9, Excommunication; and, in the case of ministers, deprivation and degradation.

These are the most material of the functions which have been retained by the Christian bishops, or, if we adopt the theory of apostolic succession, which have from the beginning been exercised by them. To these it remains to be added, that in England they are the medium of communication between the king and the people in respect of all affairs connected with religion; and that they are a constituent part of that great council of the realm which is called Parliament.

Whatever kind of moot, assembly, or council for the advice of the king there was in the earliest times of the English kingdom, the bishops were chief persons in it. The charters of the early Norman kings usually run in the form that they are granted by the assent and advice of the bishops as well as others; and when the ancient great council became moulded into the form of the modern parliament, the bishops were seated, as we now see them, in the Upper House. It is argued that they sit as barons [BARON], but the writ of summons runs to them as bishops of such a place, without any reference to the temporal baronies held by them. Down to the period of the Reformation they were far from being the only ecclesiastical persons who had seats among the hereditary nobility of the land, many abbots and priors having been summoned also, till the houses over which they presided were dissolved, and their office thus extinguished. Henry VIII. created at that time six new bishoprics, and gave the bishops placed in them seats in the same assembly. But before the nation had adjusted itself in its new position, there was a powerful party raised in the country, who maintained that a government of the church by bishops was not accordant to the primitive practice, and who sought to bring back the administration of ecclesiastical affairs to the state in which there was an equality among all ministers, and where the authority was vested in synods and assemblies. Churches upon this model had been formed at Geneva and in Scotland; and when this party became predominant in the parliament of 1642, a bill was passed for removing the bishops from their seats, to which the king gave a reluctant and forced assent. It was soon followed by an entire dissolution of the Episcopal Church. At the Restoration this act was repealed, or declared invalid, and the English bishops have ever since had seats in the House of Lords. They form the Lords Spiritual,

and constitute one of the three estates of the realm, the Lords Temporal and the Commons (the *tiers état*) being the other two. Out of this has arisen the question, now laid at rest, whether a bill has passed the House in a constitutional manner, if it has happened that no Lord Spiritual was present at any of its stages. When the House becomes a court for the trial of a peer charged with a capital offence, the bishops withdraw, it being held unsuitable to the character of ministers of mercy and peace to intermeddle in affairs of blood.

For the execution of many of the duties belonging to their high function they have officers, as chancellors, judges, and officials, who hold courts in the bishop's name.

The election of bishops is supposed by those who regard the order as not distinguished originally from the common presbyter, to have been in the people who constituted the Christian church in the city to which they were called; afterwards, when the number of Christians was greatly increased, and there were numerous assistant presbyters, in the presbyters and some of the laity conjointly. But after a time the presbyters only seem to have possessed the right, and the bishop was elected by them assembled in chapter. The nomination of such an important officer was, however, an object of great importance to the temporal princes, and they so far interfered that at length they virtually obtained the nomination. In England there is still the shadow of an election by the chapters in the cathedrals. When a bishop dies, the event is certified to the king by the chapter. The king writes to the chapter that they proceed to elect a successor. This letter is called the *congé d'élire*. The king, however, transmits to them at the same time the name of some person whom he expects them to elect. If within a short time they do not proceed to the election, the king may nominate by his own authority; if they elect any other than the person named in the king's writ, they incur the severe penalties of a præmunire, which includes forfeiture of goods, outlawry, and other evils. The bishop thus elected is confirmed in his new office under a royal commission, when he takes the oaths of allegiance, supremacy, canonical obedience, and against simony. He is next installed, and finally consecrated, which is performed by the archbishop or some other bishop named in a commission for the purpose, assisted by two other bishops. No person can be elected a bishop who is under thirty years of age.

The inequalities which prevailed in the endowments for bishops in England, have lately been in a great measure removed. Their churches, which are called *cathedrals* (from *cathedra*, a seat of dignity), are noble and splendid edifices, the unimpeachable witnesses remaining among us of the wealth, the splendour, and the architectural skill of the ecclesiastics of England in the middle ages. The cathedral of the Bishop of London is the only modern edifice. The bishop's residence is styled a palace. By 2 & 3 Vict. c. 18, bishops are empowered to raise money on their sees for the purpose of building houses of residence. The act 6 & 7 Wm. IV. c. 77, made provision prospectively for the erection of a residence for the new bishops of Ripon and Manchester.

In this country, and generally throughout Europe, an Archbishop has his own diocese, in which he exercises ordinary episcopal functions like any other bishop in his diocese, yet he has a distinct character, having a superiority and a certain jurisdiction over the bishops in his province, who are sometimes called his suffragans, together with some peculiar privileges. This superiority is indicated in the name. The word or syllable *arch* is the Greek element αρχ (which occurs in ἀρχή, ἀρχός, ἄρχων, &c.), and denotes precedence or authority. It is used extensively throughout ecclesiastical nomenclature, as may be seen in Du Cange's *Glossary*, where there are the names of many ecclesiastical officers into whose designations this word enters, who were either never introduced into the English church, or have long ceased to exist. The word *arch* also occurs in some civil titles of rank, as arch-duke. Why this word was used peculiarly in ecclesiastical affairs rather than any other term de-

noting superiority, is probably to be explained by the fact that the term ἀρχιερεύς, for chief-priest, occurs in the Greek text of the Scriptures. *Patriarch* is a compound of the same class, denoting the chief-father; and is used in ecclesiastical nomenclature to denote a bishop who has authority not only over other bishops, but over the whole collected bishops of divers kingdoms or states; it is analogous in signification to the word *pope* (papa), a bishop who has this extended superintendence. There is an official letter of the Emperor Justinian which is addressed to "John, Archbishop of Rome, and Patriarch;' and several of Justinian's ecclesiastical constitutions are addressed to "Epiphanius, Archbishop of Constantinople, and Patriarch."

Whatever might be the precise functions of the episcopus (ἐπίσκοπος, bishop), the term itself occurs in the writings of St. Paul, Phil. i. 1, 1 Tim. iii. 2, and elsewhere; but the word ἀρχιεπίσκοπος, or archbishop, does not occur till about or after the fourth century. Cyrillus Archiepiscopus Hierosolymitanorum, and Celestinus Archiepiscopus Romanorum, occur under these designations in the proceedings of the council held at Ephesus, A.D. 431. Other terms by which an archbishop is sometimes designated are *primate* and *metropolitan*. The first of these is formed from the Latin word *primus*, "the first," and denotes simple precedency, the first among the bishops. The latter is a Latin word (metropolitanus) formed from the Greek, which rendered literally into English would be *the man of the metropolis* or *mother-city*, that is, the bishop who resides in that city which contains the mother-church of all the other churches within the province or district in which he is the metropolitan. The Greek word is *metropolites* (μητροπολίτης.)

The meaning of the term metropolitan is supposed to point out the origin of the distinction between bishop and archbishop, or, in other words, the origin of the superiority of the archbishop over the bishops in his province, when it is not to be attributed to mere personal assumption, or to be regarded only as an unmeaning title. The way in which Christianity became extended over Europe was this:—An establishment was gained by some zealous preacher in some one city; there he built a church, performed in it the rites of Christianity, and lived surrounded by a company of clerks engaged in the same design and moving according to his directions. From this central point, these persons were sent from time to time into the country around for the purpose of promoting the reception of Christianity, and thus other churches became founded, offspring or children, to use a very natural figure, of the church from whence the missionaries were sent forth. When one of these subordinate missionaries had gained an establishment in one of the more considerable cities, remote from the city in which the original church was seated, there was a convenience in conferring upon him the functions of a bishop; and the leading design, the extension of Christianity, was more effectually answered than by reserving all the episcopal powers in the hands of the person who presided in the mother-church. Thus other centres became fixed; other bishoprics established; and as the prelate who presided in the first of these churches was still one to whom precedence at least was due, and who still retained in his hands some superintendence over the newer bishops, *archbishop* became a suitable designation. Thus in England, when there was that new beginning of Christianity in the time of Pope Gregory, Augustine, the chief person of the mission, gained an early establishment at Canterbury, the capital of the kingdom of Kent, through the favour of King Ethelbert. There, in this second conversion, as it may be called, the first Christian church was established, and from thence the persons were sent out, who at length Christianized the whole of the southern part of England. Paulinus, in like manner, a few years later, gained a similar establishment in the kingdom of Northumbria, through the zeal of King Edwin, who received Christianity, and built him a church at York, one of his royal cities, which may be regarded as the chief city of Edwin's kingdom. From York Christianity was diffused over the northern parts of England, as from

Canterbury over the southern. It seems to have been the peculiar diligence and dignity of Paulinus which procured for him the title of archbishop, and gave him a province, instead of a diocese only, as was the case with the other members of the Augustinian mission. This was done by special act, under the authority, it is said, of Justus, an early successor of Augustine. But the precedence of the real English metropolitan is acknowledged in two circumstances: in the style, the one being a primate of England, and the other the primate of all England; and in the rank, precedence being always given to the archbishop of Canterbury, and the lord chancellor of England being interposed in processions between the two archbishops. In former times the archbishops of Canterbury were invested by the pope with a legatine authority throughout both provinces. The archbishop can still grant faculties and dispensations in the two provinces. He can confer degrees of all kinds, and can grant special licences to marry at any place and at any time. He licenses notaries. Burn states that previous to the creation of an archbishopric in Ireland in 1152, the archbishop of Canterbury had primacy over that country, and Canterbury was declared, in the time of the two first Norman kings, the metropolitan church of England, Scotland, and Ireland, and the isles adjacent. The archbishop was sometimes styled a patriarch and *orbis Britannici pontifex*. At general councils abroad he had precedency of all other archbishops.

There is evidence sufficient to show that Christianity had made its way long before the time of Gregory among the Roman inhabitants of Britain and the Romanized Britons; and it is not contended that either Scotland or Ireland owed its Christianity to that mission. Wales has no archbishop; whence it seems to be a legitimate inference that the Welsh church is only a fragment of a greater church in which the whole of England and Wales was comprehended, the church, as to what is now called England, being destroyed by the Saxons, who were pagans. Yet some have contended that there was an archbishop at Caer Leon; and others, on grounds equally uncertain, that bishops, under the denomination of archbishops, were settled in those early times at London and York.

This account of the mode in which Christianity was diffused through many parts of Europe may be perfectly true; but though a specious explanation of the word metropolitan, it is not a true explanation. Under the later empire the name Metropolis was applied to various cities of Asia and conferred on them as a title of rank. The emperors Theodosius and Valentinian conferred on Berytus in Phoenicia the name and rank of a metropolis "for many and sufficient reasons." (*Cod.* xi. tit. 22 (21). Accordingly the bishop of a metropolis was called metropolitan (μητροπολίτης), and the bishop of a city which was under a metropolis was simply called bishop. All the bishops, both metropolitan and others, were subject to the archbishop and patriarch of Constantinople, who received his instructions in ecclesiastical matters from the emperor. (*Cod.* i. tit. 3, s. 42, 43).

The precise amount of superintendence and control preserved by the archbishops over the bishops in their respective provinces, does not seem to be very accurately defined. Yet if any bishop introduces irregularities into his diocese, or is guilty of scandalous immoralities, the archbishop of the province may, as it seems, inquire, call to account, and punish. He may, it is said, deprive. In 1822 the archbishop of Armagh deposed the bishop of Clogher from his bishopric. In disputes between a diocesan and his clergy an appeal lies to the archbishop of the province in all cases except disputes respecting curates' stipends. (1 & 2 Vict. c. 106.) Rolle, a good authority, says that the archbishop may appoint a coadjutor to one of his suffragans who is infirm or incapable. The right is now confirmed by 6 & 7 Vict. c. 62, intituled 'An Act to provide for the Performance of the Episcopal Functions in case of the Incapacity of any Bishop or Archbishop.' It is under this act that the bishop of Salisbury at present exercises episcopal functions in the diocese of Bath and Wells.

An archbishop has a right to name one of his clerks or chaplains to be provided for by every bishop whom he consecrates. The present practice is for the bishop whom he consecrates, to make over by deed to the archbishop, his executors and assigns, the next presentation of such benefice or dignity which is at the bishop's disposal within his see, as the archbishop may choose. This deed only binds the bishop who grants, and, therefore, if a bishop dies before the option is vacant, the archbishop must make a new option when he consecrates a new bishop. If the archbishop dies before the benefice or dignity is vacant, the next presentation goes to his executors or assigns according to the terms of the grant.

The archbishop also nominates to the benefices or dignities which are at the disposal of the bishops in his province, if not filled up within six months from the time of the avoidance. During the vacancy of a see, he is the guardian of the spiritualities.

Certain of the bishops are nominally officers in the Cathedral of Canterbury, or in the household of the archbishop. "The bishop of London is his provincial dean, the bishop of Winchester his chancellor, the bishop of Lincoln anciently was his vice-chancellor, the bishop of Salisbury his precentor, the bishop of Worcester his chaplain, and the bishop of Rochester (when time was) carried the cross before him." (Burn.) The archbishop has also certain honorary distinctions; he has in his style the phrase "by Divine providence," but the bishop's style runs "by Divine permission;" and while the bishop is only installed, the archbishop is said to be enthroned. The title of "Grace" and "Most Reverend Father in God" is used in speaking and writing to archbishops, and bishops have the title of "Lord" and "Right Reverend Father in God."

The archbishops may nominate eight clerks each to be their chaplains, and bishops six. The archbishop of Canterbury claims the right of placing the crown upon the head of the king at his coronation; and the archbishop of York claims to perform the same office for the queen consort, and he is her perpetual chaplain. The archbishop of Canterbury is the chief medium of communication between the clergy and the king, and is consulted by the king's ministers in all affairs touching the ecclesiastical part of the constitution; and he generally delivers in parliament what, when unanimous, are the sentiments of the bench of bishops. The two archbishops have precedence of all temporal peers, except those of the blood-royal; and except that the lord chancellor has place between the two archbishops.

The province of the archbishop of York consists of the six northern counties, with Cheshire and Nottinghamshire; to these were added, by act of parliament in the time of Henry VIII., the Isle of Man: in this province he has five suffragans, the bishop of Sodor and Man, the bishop of Durham, the only see in his province of Saxon foundation, the bishops of Carlisle, Chester, and Ripon. Of these, the bishopric of Carlisle was founded by King Henry I. in the latter part of his reign, and the bishopric of Chester by King Henry VIII.; so thinly scattered was the seed of Christianity over the northern parts of the kingdom in the Saxon times. To the above have been added the bishopric of Ripon, created by act of parliament (6 & 7 Wm. IV. c. 77) in 1836, and the bishopric of Manchester, also created by the same act; but a bishop will not be appointed for Manchester until a vacancy occurs in either the see of St. Asaph or Bangor.

The rest of England and Wales forms the province of the archbishop of Canterbury, in which there are twelve bishoprics of Saxon foundation; and the bishopric of Ely, founded by Henry I.; the bishoprics of Bristol, Gloucester, Oxford, and Peterborough, founded by Henry VIII.; and the four Welsh bishoprics, of which St. David's and Llandaff exhibit a catalogue of bishops running back far beyond the times of St. Augustine. The Welsh bishoprics will be reduced to three by the union of St. Asaph and Bangor whenever a vacancy occurs in either. The twelve English bishoprics of Saxon foundation are London, Winchester, Rochester, Chichester, Salisbury, Exeter, Bath and Wells,

Worcester, Hereford, Lichfield and Coventry, Lincoln, and Norwich.

The dioceses of the two English archbishops, or the districts in which they have ordinary episcopal functions to perform, were remodelled by 6 & 7 Wm. IV. c. 77. The diocese of Canterbury comprises the greater part of the county of Kent, except the city and deanery of Rochester and some parishes transferred by the above act, a number of parishes distinct from each other, and called Peculiars, in the county of Sussex, with small districts in other dioceses, particularly London, which, belonging in some form to the archbishop, acknowledge no inferior episcopal authority. The diocese of the archbishop of York consists of the county of York, except that portion of it included in the new diocese of Ripon, the whole county of Nottingham, with some detached districts.

Exact knowledge of the diocesan division of the country is of general importance as a guide to the depositaries of wills of parties deceased. But all wills which dispose of property in the public funds must be proved in the Prerogative Court of the archbishop of Canterbury; and in cases of intestacy, letters of administration must be obtained in the same court; for the Bank of England acknowledges no other probates or letters of administration.

Lives of all the archbishops and bishops of England and Wales are to be found in an old book entitled *De Præsulibus Angliæ Commentarius.* It is a work of great research and distinguished merit. The author was Francis Godwin, or Goodwin, bishop of Llandaff, and it was first published in 1616. A new edition of it, or rather the matter of which it consists, translated and recast, with a continuation to the present time, would form a useful addition to our literature. There is also an octavo volume, published in 1720, by John le Neve, containing lives of all the Protestant archbishops, but written in a dry and uninteresting manner. Of particular lives there are many, by Strype and others; many of the persons who have held this high dignity having been distinguished by eminent personal qualities, as well as by the exalted station they have occupied.

St. Andrew's is to Scotland what Canterbury is to England; and while the episcopal form and order of the church existed in that country, it was the seat of the archbishop, though till 1470, when the pope granted him the title of archbishop, he was known only as the Episcopus Maximus Scotiæ. In 1491 the bishop of Glasgow obtained the title of archbishop, and had three bishops placed as suffragans under him. Until about 1466 the archbishop of York claimed metropolitan jurisdiction over the bishops in Scotland.

In Ireland there are two archbishoprics, Armagh and Dublin. The archbishoprics of Tuam and Cashel were reduced to bishoprics by the act 3 & 4 Will. IV. c. 37. Catalogues of the archbishops of Ireland and Scotland may be found in that useful book for ready reference the *Political Register*, by Robert Beatson, Esq., of which there are two editions.

To enumerate all the prelates throughout Christendom to whom the rank and office of archbishop belong would extend this article to an unreasonable length. The principle exists in all Catholic countries, that there shall be certain bishops who have a superiority over the rest, forming the persons next in dignity to the great pastor pastorum of the church, the pope. The extent of the provinces belonging to each varies, for these ecclesiastical distributions of kingdoms were not made with foresight, and on a regular plan, but followed the accidents which attended the early fortunes of the Christian doctrine. In Germany, some of the archbishops attained no small portion of political independence and power. Three of them, viz. those of Treves, Cologne, and Mainz, were electors of the empire. In France, under the old regime, there were eighteen archbishoprics, all of which, except Cambray, are said to have been founded in the second, third, and fourth centuries; the foundation of the archbishopric of Cambray was referred to the sixth century. The number of bishops in France was one hundred and four. The French have a very large and splendid work, entitled *Gallia Christiana*, containing an ample history of each province, and of the several subordinate sees comprehended in it, and also of the

abbeys and other religious foundations, with lives of all the prelates drawn up with the most critical exactness. Since the Revolution forty-nine dioceses in France have been suppressed, and only three new ones have been created. The French hierarchy consists at present of fourteen archbishops and sixty-six bishops. According to the 'Metropolitan Catholic Almanac' for 1844, published in the United States, the number of Roman Catholic archbishops in Europe is 108, and of bishops 469, and there are 154 bishops in other parts of the world, making a total of 731 bishops.

In the British colonies the first bishopric created was that of Nova Scotia, in 1787, and the number of bishops in the colonies has been increased by a number of recent creations of sees to fifteen. [BISHOPRIC.] In 1841 a bishop of the United Church of England and Ireland was appointed for Jerusalem. The king of Prussia was the first to suggest the appointment to Queen Victoria, and the right of appointment will be alternately enjoyed by the crowns of Prussia and England; but the archbishop of Canterbury has a veto on the Prussian appointment. The bishop of Jerusalem is for the present a suffragan of the archbishop of Canterbury's; but he cannot exercise any of his functions in the dominions of Great Britain, nor can the persons ordained by him. The act 5 Vict. c. 6, was passed to enable the archbishops of Canterbury and York, and such bishops as they might select, to consecrate a foreign bishop.

On the separation of the North American colonies from the mother-country, a difficulty was felt by those persons who were desirous of observing the forms of the Anglican Church, as persons ordained by the bishops of England are required to take the oath of allegiance, &c. An act was therefore passed (24 Geo. III. c. 35) which relieved them from the necessity of taking such oaths, with the proviso that they could not legally officiate in any part of the British dominions. The American bishops, from the same obstacle, were for some time consecrated by Scotch bishops; but the act 26 Geo. III. c. 84, which dispensed with the oath of allegiance, and rendered only the king's licence necessary, enabled them to resort to the bishops of the Church of England.

At the present time there are twenty-four bishops of the Protestant Episcopal Church of the United States of America.

The Episcopal church of the United States of North America is said to be a complete picture of the Church of England republicanized. The superior powers of church government are vested in a General or National Convention which meets triennially. The Convention consists of two houses. The bishops sit as a body in their own right and form a separate House. The lower House is composed of lay and clerical delegates. Each diocese is represented by four laymen and four of the clergy, who are elected by local Diocesan Conventions. The lay members of the Diocesan Conventions are elected by their respective congregations or vestries. The General Convention, amongst other things, has the power of revising old or making new canons. It hears and determines charges against bishops; receives and examines testimonials from Diocesan Conventions recommending new bishops, and decides upon their appointment; without the certificate of the General Convention a bishop cannot be consecrated. The sittings of a General Convention usually last about three weeks. At the Convention which assembled at Philadelphia in Oct. 1844, eleven committees were appointed for the transaction of business; there was one committee on matters relating to the admission of new dioceses; and another on the consecration of bishops. At this Convention a canon was passed for regulating the consecration of foreign bishops: such bishops cannot exercise their functions in the United States. At the same Convention "sentence of suspension" was passed on a bishop by the House of Bishops. They adjudged him to be "suspended from all public exercise of the office and functions of the sacred ministry, and in particular from all exercise whatsoever of the office and work of a bishop of the church of God." The resignation of a bishop must in the first instance be accepted by a majority of two-thirds of the lay and clerical deputies of the Convention of his diocese; and it

then requires to be ratified by a majority of both Houses at a General Convention. The title assumed by a bishop in the United States is "Right Reverend."

The bishops of the Methodist Episcopal Church of the United States have no particular province or district. Their time is chiefly spent in attending the different annual conferences of the church.

The Roman Catholic hierarchy in the United States is composed of one archbishop, fifteen bishops, and five coadjutors. The first Roman Catholic bishop in the United States was consecrated in 1790.

Bishops in partibus.—This is an elliptical phrase, and is to be supplied with the word *Infidelium.* These are bishops who have no actual see, but who are consecrated as if they had, under the fiction that they are bishops in succession to those who were the actual bishops in cities where Christianity once flourished. Syria, Asia Minor, Greece, and the northern coast of Africa, present many of these extinct sees, some of them the most ancient and most interesting in the history of Christianity. When a Christian missionary is to be sent forth in the character of a bishop into a country imperfectly Christianized, and where the converts are not brought into any regular church order, the pope does not consecrate the missionary as the bishop of that country in which his services are required, but as the bishop of one of the extinct sees, who is supposed to have left his diocese and to be travelling in those parts. So, when England had broken off from the Roman Catholic Church, and yet continued its own unbroken series of bishops in the recognised English sees, it was, for Roman Catholic ecclesiastical affairs, divided into 'districts,' over each of which a bishop has been placed, who is a *bishop in partibus.* When, in the time of King Charles I., Dr. Richard Smith was sent by the pope into England in the character of bishop, he came as bishop of Chalcedon. The London District is superintended by a bishop who is styled the Bishop of Olena; the Eastern District by the Bishop of Ariopolis; the Western District by the Bishop of Pella; the Central District by the Bishop of Cambysopolis; the Lancashire District by the Bishop of Tloa; the District of York by the Bishop of Trachis; the Northern District by the Bishop of Abydos; and the Welsh District is under a vicar-apostolic, the Bishop of Apollonia. Scotland is divided in a similar manner. Each District in Great Britain is subdivided into Rural Deaneries.

In the Charitable Donations (Ireland) Act (7 & 8 Vict. c. 97) the Roman Catholic prelates are designated for the first time since the Reformation by their episcopal titles. They had been referred to in the bill, when first brought in, as "any person in the said church [of Rome] of any higher rank or order," &c.; and, on the proposition of the government, this was altered to "any archbishop or bishop, or other person in holy orders, of the Church of Rome." In December, 1844, a royal commission was issued constituting the Board of Charitable Bequests in Ireland, and the two Roman Catholic archbishops and bishop who are appointed members of the Board are styled "Most Reverend" and "Right Reverend," and are given precedency according to their episcopal rank.

The English bishops who have been sent to Nova Scotia, to Quebec, and to the East and West Indies, have been named from the countries placed under their spiritual superintendency, or from the city which contains their residence and the cathedral church.

Suffragan bishops.—In England, every bishop is, in certain views of his character and position, regarded as a suffragan of the archbishop in whose province he is. But suffragan bishops are rather to be understood as bishops *in partibus* who were admitted by the English bishops before the Reformation to assist them in the performance of the duties of their office. When a bishop filled some high office of state, the assistance of a suffragan was almost essential, and was probably usually conceded by the pope, to whom such matters belonged, when asked for. A catalogue of persons who have been suffragan bishops in England was made by Wharton, a great ecclesiastical antiquary, and is printed in an appendix to a Dissertation on Bishops *in partibus*, published in 1784 by another distinguished church-antiquary, Dr. Samuel Pegge.

At the Reformation provision was made for a body of suffragans. A suffragan, in the more ordinary sense of the term, is a kind of titular bishop, a person appointed to assist the bishop in the discharge of episcopal duties. The act 26 Henry VIII. c. 14, authorizes each archbishop and bishop to name a suffragan, which is to be done in this manner: he is to present the names of two clerks to the king, one of whom the king is to select. He was no longer to be named from some extinct see, but from some town within the realm. Six and twenty places are named as the seats (nominally) of the suffragan bishops. They were these which follow:—

Thetford,	Marlborough,	Grantham,
Ipswich,	Bedford,	Hull,
Colchester,	Leicester,	Huntingdon,
Dover,	Gloucester,	Cambridge,
Guildford,	Shrewsbury,	Pereth,
Southampton,	Bristol,	Berwick,
Taunton,	Penrith,	St. Germains,
Shaftsbury,	Bridgewater,	and the
Molton,	Nottingham,	Isle of Wight.

This was before the establishment of the six new bishoprics. But every bishop within his province is sometimes spoken of as a suffragan of the archbishop, being originally, in fact, little more. Questions have been raised respecting the origin of the word suffragan, which is by some supposed to be connected with *suffrages* or votes, as if the bishops were the voters in ecclesiastical assemblies; but more probably, if connected with suffrages at all, the term has a reference to their claiming to vote in the election of the archbishop. A great question respecting the right of election of an archbishop of Canterbury, between the suffragans of his province and the canons of Canterbury, arose in the time of King John, and is a principal occurrence in the contest which he waged with the pope and the church.

Very few persons were nominated suffragan bishops under the act Hen. VIII. c. 14. One, whose name was Robert Pursglove, who had been an abbot, and who was a friend to education, was suffragan bishop of Hull. He founded the Grammar School of Tideswell in Derbyshire. He died in 1579, and lies interred in the church of Tideswell, under a sumptuous tomb, on which is his effigy in the episcopal costume, with a long rhyming inscription presenting an account, curious as being contemporary, of the places at which he received his education, and the ecclesiastical offices which in succession he filled.

Boy-bishop.—In the cathedral and other greater churches, it was usual on St. Nicholas-day to elect a child, usually one of the children of the choir, bishop, and to invest him with the robes and other insignia of the episcopal office; and he continued from that day (Dec. 6) to the feast of the Holy Innocents (Dec. 28) to practise a kind of mimicry of the ceremonies in which the bishop usually officiated, more for the amusement than to the edification of the people. The custom, strange as it was, existed in the churches on the Continent as well as in England. It may be traced to a remote period. It was countenanced by the great ecclesiastics themselves, and in their foundation they sometimes even made provision for these ceremonies. This was the case with the archbishop of York in the reign of Henry VII., when he founded his college at Rotherham. Little can be said in favour of such exhibitions, but that they served to abate the dreariness of mid-winter. Much may be found collected on this subject in Ellis's edition of Brand's 'Popular Antiquities,' vol. i. pp. 328–336. The custom was finally suppressed by a proclamation of Henry VIII. in 1542.

BISHOPRIC is a term equivalent to diocese or see, denoting the whole district through which the bishop's superintendency extends. The final syllable is the Anglo-Saxon rice, *region*, which entered in like manner into the composition of one or two other words. The word Diocese is from the Greek *dioekesis* (διοίκησις), which literally signifies 'administration.' (See the instances of the use of this word in Dion. Cassius, Index, ed. Reimarus.) In the time of the Emperor Constantine and afterwards the word Diocese was used to signify one of the civil divisions of the Empire. The word *See*, in French *siége*, in Italian *sedia*, signifies 'seat,' 'residence,' and is ultimately derived from the Latin *sedes*.

The Italians call the Holy See, La Sedia Apostolica; and the French, Le Saint Siége.

In England there are two archbishoprics, and twenty bishoprics: in Wales, four bishoprics; the Isle of Man forms also a bishopric, but the bishop has no seat in the English parliament.

The basis of the present diocesan distribution of England was laid in the times of the Saxon Heptarchy. At the Conquest there were two archbishoprics and thirteen bishoprics:

Canterbury,	Exeter,
York,	Worcester,
London,	Hereford,
Winchester,	Coventry and Lichfield,
Chichester,	
Rochester,	Lincoln,
Salisbury,	Norwich,
Bath and Wells,	Durham.

The first innovation on this arrangement was made by King Henry I., who, to gratify the abbot of the ancient Saxon foundation at Ely, and to free him from the superintendence of the Bishop of Lincoln, in whose diocese he was, erected Ely into a bishopric, the church of the monastery being made a cathedral. He assigned to it as its diocese the county of Cambridge, and some portion of Norfolk, perhaps as much as had formerly been comprehended within Mercia, for we have no better guide to the exact limits of the ancient Saxon kingdoms than the limitations of the ancient dioceses. This was effected in 1109.

The second was in 1133, near the end of the reign of Henry I., when the see of Carlisle was founded. The diocese, before the alterations effected by 6 & 7 Wm. IV. c. 77, consisted of portions of the counties of Cumberland and Westmoreland, perhaps not before comprehended within any English diocese.

No other change took place till 1541, when King Henry VIII. erected six new bishoprics, facilities for doing so being afforded by the dissolution of the monastic establishments, which placed at the king's disposal large and splendid churches, and great estates, out of which to make a provision for the support of the bishops. These were, 1. Oxford, having for its diocese the county of Oxford, which had previously been included within the diocese of Lincoln. 2. Peterborough: this diocese was also taken out of that of Lincoln, and comprised the county of Northampton and the greater portion of Rutland. 3. Gloucester, having for its diocese the county of Gloucester, which had been previously in the diocese of Worcester. 4. Bristol, to which the city of Bristol and the whole county of Dorset, heretofore belonging to the diocese of Salisbury, were assigned. 5. Chester; to this a very large tract was assigned, namely, the county of Chester, heretofore part of the diocese of Lichfield and Coventry, and the whole county of Lancaster, part of Cumberland, and the archdeaconry of Richmond, all which were before in the diocese of York; and 6. Westminster; the county of Middlesex, which before had belonged to the diocese of London, being assigned to it as a diocese. This last bishopric, however, soon fell. In about nine years, Thirlby, the first and only bishop, was translated to the see of Norwich, and the county of Middlesex was restored to the diocese of London.

From the year 1541 until 1836 no change was made in the diocesan distribution of England. There was at first no proportion among the dioceses; some, as those of York and Lincoln, being of vast extent, and others, as Hereford, Rochester, and Canterbury, small. The change which has taken place in the population of different parts of England heightened the irregularity in respect of the burthen of these sees. Before the passing of 6 & 7 Wm. IV. c. 77, the revenues were not in any degree proportionate to the extent or population of the diocese, as they consisted for the most part of lands settled upon the sees, often in times long before the Conquest, the revenues from which varied greatly, according as the lands lay in places towards which the tide of population had been directed, or the contrary. The act 6 & 7 Wm. IV. c. 77, created two new bishoprics in England (Ripon and Manchester), and provided for the union of the bishopric of Bristol with that of Gloucester. The bishopric of Bristol no longer exists. The bishop is called the

Bishop of Gloucester and Bristol. The new diocese of Ripon did not consequently add to the number of bishoprics. This bishopric is formed out of the dioceses of York and Chester. The same act also provided for the union of the dioceses of Bangor and St. Asaph, and on a vacancy occurring in either of them a bishop of Manchester will be appointed. The diocese of Manchester will consist of the whole county of Lancaster except the deanery of Furnes and Cartmel.

No change appears to have taken place in the distribution of Wales into four bishoprics; those of Bangor and St. Asaph in North Wales, and of St. David's and Llandaff in South Wales. The bishoprics of Bangor and St. Asaph will be united whenever a vacancy occurs in either, pursuant to 6 & 7 Wm. IV. c. 77. In 1844 the government was defeated by 49 to 37, in the House of Lords, on a motion by Earl Powis, for repealing the clause in the above act which provides for the union of the two sees. But the previous necessary assent of the crown being refused, the measure was withdrawn.

From the *Report of the Commissioners appointed by his Majesty to inquire into the Ecclesiastical Revenues of England and Wales*, published in 1835, we abstract the following return of the revenues of the English sees. The bishoprics are arranged under the archbishoprics to which they respectively belong. For the number of benefices, population, &c. of each see, see BENEFICE.

	Net Income.
CANTERBURY	£19,182
London	13,929
Winchester	11,151
St. Asaph	6,301
Bangor	4,464
Bath and Wells	5,946
Bristol	2,351
Chichester	4,229
St. David's	1,897
Ely	11,105
Exeter	2,713
Gloucester	2,282
Hereford	2,516
Lichfield and Coventry	3,923
Lincoln	4,542
Llandaff	924
Norwich	5,395
Oxford	£2,648
Peterborough	3,103
Rochester	1,459
Salisbury	3,939
Worcester	6,565
YORK	12,629
Durham	19,066
Carlisle	2,213
Chester	3,261
Sodor and Man	2,555

The important act already quoted not only remodelled the diocesan divisions of England, but provided for a fresh distribution of the revenues of the different bishops according to the following scale:

Archbishops.	
Canterbury	£15,000
York	10,000
Bishops.	
London	10,000
Durham	8,000
Winchester	7,000
Ely	5,500
St. Asaph and Bangor	5,200
Worcester	5,000
Bath and Wells	5,000

The other bishoprics are augmented by fixed contributions out of the revenues of the richer sees, so as to increase their average annual incomes to not less than 4000*l.* nor more than 5000*l.* The bishop of Sodor and Man has 2000*l.* a-year. The surplus revenues are paid into the hands of the Ecclesiastical Commissioners, and constitute what is called the Episcopal Fund; and every seven years, from Jan. 1, 1837, a new return is to be made by them of the revenues of all the bishoprics, and thereupon the scale of episcopal payments is to be revised, so as to preserve the scale fixed upon by the act. The first revision upon new returns of income for 1844 is now making or has just been completed. Provision was also made in this act for a more equal distribution of patronage among the several bishops, proportioned to the relative magnitude and importance of their respective dioceses.

The bishops of London, Durham, and Winchester, rank next to the archbishops; the others rank according to priority of consecration.

While the church of Scotland was episcopal in its constitution it had two archbishoprics, St. Andrew's and Glasgow, and eleven bishoprics, to which, as late as 1633, a twelfth was added, the bishopric of Edinburgh. In the other thirteen sees there is a long and pretty complete catalogue of bishops, running up to the ninth, tenth, eleventh, or twelfth centuries. The eleven antient bishoprics were those of

Aberdeen,	Dumblaine,	Orkney,
Argyle,	Dunkeld,	Ross,
Brechin,	Galloway,	
Caithness,	Moray,	

and the Isles, or Sodor, a see which was formerly within the superintendency of the bishop of Man.

At the Revolution the Presbyterian church of Scotland was acknowledged as the national church: but there is still an Episcopal church in Scotland, the members of which are there in the character of dissenters. The present sees are Aberdeen, Edinburgh, Dunkeld, Ross and Argyle, Glasgow and Brechin. In a letter addressed to the Bishop of Glasgow, dated Fulham, November 21, 1844, the Bishop of London strongly disclaimed jurisdiction over English clergymen officiating in Scotland, and recommended them to pay canonical obedience to the Scottish bishops within whose diocese they were officiating.

Before the passing of 3 & 4 Wm. IV. c. 37, and 4 & 5 Wm. IV. c. 90, there were four archbishoprics and eighteen bishoprics in the Protestant Church of Ireland. The four archiepiscopal provinces were subdivided into thirty-two dioceses, which had been consolidated into eighteen bishoprics at different epochs. At the time of passing the act, by which many were to be extinguished on the death of the existing bishop, there were in the province of

Armagh—Meath and Clonmacnoise, Clogher, Down and Connor, Kilmore, Dromore, Raphoe, and Derry.

Dublin—Kildare, Ossory, and Ferns and Leighlin.

Cashel—Limerick, Cork and Ross, Waterford and Lismore, Cloyne, and Killaloe and Kilfenora.

Tuam—Elphin, Clonfert and Kilmacduagh, and Killala and Achonry.

Of these, by the act above-mentioned, the archiepiscopal diocese of Tuam was to be united to that of Armagh, and that of Cashel to Dublin: but the two suppressed archbishoprics were in future to be bishoprics. The diocese of Dromore was to be united to that of Down and Connor; that of Raphoe to Derry; Clogher to Armagh; Elphin to Kilmore; Killala and Achonry to Tuam and Ardagh; Clonfert and Kilmacduagh to Killaloe and Kilfenora; Kildare to Dublin and Glandelagh; Leighlin and Ferns to Ossory; Waterford and Lismore to Cashel and Emly; Cork and Ross to Cloyne. The diocese of Meath and Clonmacnoise, and that of Limerick, remain unaltered. The archbishoprics were to be reduced to two, and the bishoprics to ten. At the present time (Jan. 1845) the reductions contemplated by the act 3 & 4 Wm. IV. have been nearly completed, the number of archbishops being two, and the number of bishops twelve. In 1831 the income of the Irish archbishops and bishops was returned at 151,128*l.*, and the income of the episcopal establishment, as it will exist in future, will be 82,953*l.*, being a saving of 68,175*l.* a-year; which fund is managed by the Ecclesiastical Commissioners of Ireland, and must be dispensed for ecclesiastical and educational purposes.

One archbishop and three bishops represent the Irish Church in the House of Lords. They are changed every session, and the system of rotation, by which all sit in turn, is regulated by 3 Wm. IV. c. 37 (§ 51). The two archbishops sit in each session alternately. The bishops of Meath and Kildare take precedence of all other bishops, and are privy councillors in right of their sees: the rest take precedence according to priority of consecration.

The Roman Catholic hierarchy in Ireland consists of four archbishops and twenty-two bishops.

The bishopric of Man is traced to Germanne, one of the companions of St. Patrick, in the fifth century; but there are many breaches in the series of bishops from that time to the present. Sodor,

which is supposed to be a Danish term for the Western Isles of Scotland, was under the same bishop till the reign of Richard II., when the Isle of Man having fallen under the English sovereignty, the Islands withdrew themselves, and had a bishop of their own. The nomination of the bishop was in the house of Stanley, earls of Derby, from whom it passed by an heiress to the Murrays, dukes of Athol. This bishopric was declared by an act of 33 Henry VIII. to be in the province of York. The act 6 & 7 Wm. IV. c. 77, actually united (prospectively) the bishopric of Sodor and Man to that of Carlisle; but by 1 Vict. c. 30, it is to continue an independent bishopric. The bishop of Sodor and Man does not sit in the House of Lords.

The Isle of Wight is part of the diocese of Winchester; the isles of Jersey and Guernsey, with the small islands adjacent, are also in the diocese of Winchester; the Scilly Isles are in the diocese of Exeter.

In the colonies, where there are churches dependent on the English episcopal church, bishops have been consecrated and appointed to the several places following: namely, Nova Scotia, Quebec, Toronto, Newfoundland, British Guiana, Jamaica, Barbadoes, Antigua, Calcutta, Madras, Bombay, Australia, Tasmania, New Zealand, Gibraltar, and New Brunswick. Several of these bishoprics have been created by letters patent, and their revenues and jurisdictions are regulated by acts of parliament; but others, as those of New Zealand, Tasmania, Antigua, Gibraltar, &c., are not of royal or parliamentary creation, but have been established by the archbishops and bishops, in concert with or by consent of the ministers of the crown. In 1841 a meeting was held of the archbishops and bishops of England and Ireland at Lambeth Palace, when it was agreed to undertake the charge of funds then raising for the endowment of bishoprics in the colonies, and to become responsible for their application. In no case do they proceed without the concurrence of the government. In 1841, in pursuance of this resolution, the bishopric of New Zealand was created; in 1842, the four bishoprics of Guiana, Antigua, Gibraltar, and Tasmania; and in 1844, Newfoundland and New Brunswick. As funds for endowments are raised, bishops will be consecrated for the Cape of Good Hope, Ceylon, and next for Sierra Leone, South Australia, Western Australia, Port Phillip, and for Northern and Southern India. British colonies or dependencies which are not within any diocese are considered to be under the pastoral care of the Bishop of London.

There are thirty-two Roman Catholic archbishops, bishops, coadjutor bishops, and vicars-apostolic in the British Colonies. At Sydney, Quebec, and in Bengal, the Roman Catholic prelates are of the rank of archbishops.

The pope is the bishop of the Christian church of Rome, and claims to be the successor of St. Peter, of whom it is alleged that he was the first bishop of that church, and that to him there was a peculiar authority assigned, not only over all the inferior pastors or ministers of the church, but over the rest of the apostles, indicated to him by the delivery of the keys. The whole of this, the foundation of that superiority which the bishop of Rome has claimed over all other bishops, has furnished matter of endless controversy; and it does not appear that there is any sufficient historical authority for the allegation that St. Peter did act for any permanency as the bishop of that church, or for the six or seven persons named as successively bishops of that church after him. It seems more probable that the superiority enjoyed by that bishop at a very early period over other bishops (which was not universally acknowledged, and strenuously opposed by our own Welsh bishops) resulted from his position in the chief city of the world, and the opportunities which he enjoyed of constant access to those in whom the chief temporal authority was vested.

BLACK-MAIL is the name given to certain contributions formerly paid by landed proprietors and farmers in the neighbourhood of the Highlands of Scotland, of the English and Scottish border, and of other places subjected to the inroads of "Rievers," or persons who stole cattle on a large scale. It was paid sometimes to a neighbouring chief engaging

to keep the property clear of depredation, and frequently to the depredators themselves as a compromise. Spelman attributes the term black to the circumstance of the impost being paid in copper money, and he is followed by Ducange. Its origin has been sought in the German *plagen* to trouble, the root of which is represented by the English word plague. Dr. Jamieson, however, in his 'Etymological Dictionary,' thinks the word was intended simply to designate the moral hue of the transaction. Pennant absurdly supposes that the word mail is a corruption of "meal," in which he presumes the tax to have been paid. (*Tour in Scotland*, ii. 404.) The word mail, however, was used in Scotland to express every description of periodical payment, and it is still a technical term in the law of landlord and tenant. The expression has been used in English legislation in reference to the borders, as in the 43 Eliz. c. 13, § 2: "And whereas now of late time there have been many incursions, roads, robberies, and burning and spoiling of towns, villages, and houses within the said counties, that divers of her majesty's loving subjects within the said counties, and the inhabitants of divers towns there, have been forced to pay a certain rate of money, corn, cattle, or other consideration, commonly there called by the name of *black-mail*, unto divers and sundry inhabiting upon or near the borders, being men of name, and friended and allied with divers in those parts who are commonly known to be great robbers and spoil-takers." In 1567 an act of the Scottish parliament (c. 21) was passed for its suppression in the shires of Selkirk, Roxburgh, Lanark, Dumfries, and Edinburgh. In later times, and especially during the eighteenth century, at about the middle of which it was extinguished, it prevailed solely in the parts of the northern counties which border on the Highlands. The fruitful shire of Murray, separated from the other cultivated counties of Scotland, and in a great measure bordered by Highland districts, was peculiarly subject to the ravages from which this tax afforded a protection, and was called "Moray land, where every gentleman may take his prey," as being a place where there was little chance of a plunderer stumbling on the property of a brother marauder, and infringing an old Scottish proverb, that "corbies dinna peik out corbies' eyne." In the old practice of the law black-mail seems to have been used to designate every description of illegal extortion. Thus in 1530 Adam Scott, of Tuschelau, is "convicted of art and part of theftuously taking black mail from the time of his entry within the castle of Edinburgh in ward, from John Browne, in Hoprow." He was beheaded. (Pitcairn's *Crim. Tr.* i. 145.*) In 1550 James Gulane and John Gray, messengers-at-arms, or officers of the law, are accused of apprehending a criminal, and taking black-mail from him for his liberty (Ib. 356*). Subsequently, and in the vicinity of the Highlands, the practice seems to have been to a certain extent countenanced by the law, as providing to the inhabitants that security from plunder and outrage which the government could not ensure to them. Thus in Sir John Sinclair's 'Statistical Account of Scotland' (*Parish of Strathblane*, xviii. 582), there is an order of the justices of peace of Stirlingshire to enforce payment of certain stipulated sums which the inhabitants were to pay to a neighbouring proprietor for the protection of "their hous goods and geir." Those only who chose to resign the protection afforded were exempted from the corresponding payment. In the same work (*Parish of Killearn*, xvi. 124) there is a contract, so late as the year 1741, executed with all the formalities of law, between James Graham, of Glengyle, on the one part, "and the gentlemen, heritors, and tenants within the shires of Perth, Stirling, and Dunbarton, who are hereto subscribing, on the other part," in which Graham engages to protect them for a mail of 4 per cent. on their valued rents, which it appears he afterwards reduced to 3 per cent. He engages that he "shall keep the lands subscribed for, and annexed to the respective subscriptions, skaithless of any loss to be sustained by the heritors, tenants, or inhabitants thereof, through the stealing and away-taking of their cattle, horses, or sheep, and that for the

space of seven years complete, from and after the term of Whit-Sunday next to come; and for that effect, either to return the cattle so stolen from time to time, or otherwayes within six months after the theft committed, to make payment to the persons from whom they were stolen, of their true value, to be ascertained by the oaths of the owners, before any judge ordinary [sheriff]; providing always that intimation be made to the said James Graham, at his house in Correilet, or where he shall happen to reside for the time, of the number and marks of the cattle, sheep, or horses stolen, and that within forty-eight hours from the time that the proprietors thereof shall be able to prove by habile witnesses, or their own or their herd's oaths, that the cattle amissing were seen upon their usual pasture within the space of forty-eight hours previous to the intimation."

Within a very few years after the practice had been thus systematized, it was swept away by the proceedings following on the rebellion of 1745. Captain Burt, whose amusing 'Letters from a gentleman in the north of Scotland to his friend in London,' though bearing date in 1754, refer to a period immediately before the rebellion. Troops were stationed in the district to which he refers, the marauders were kept in check, and he describes the isolated acts of depredation then committed as requiring great caution and cunning, the cattle taken in the west being exchanged within the Highlands for those which might be captured towards the east, so that officers of the law, or others in search of them, might have to traverse a vast district of mountain-land before the stolen cattle they might be in search of could be identified (ii. p. 208, *et seq.*). In the Statistical Account already referred to there are many allusions to black-mail and the state of society co-existent with it, which seem to be founded on personal recollection. In the account of the parish of Fortingal in Perthshire there occurs the following sketch:—"Before the year 1745 Ranoch was in an uncivilized, barbarous state, under no check or restraint of laws. As an evidence of this, one of the principal proprietors never could be compelled to pay his debts. Two messengers were sent from Perth to give him a charge of horning. He ordered a dozen of his retainers to bind them across two hand-barrows, and carry them in this state to the bridge of Cainachan, at nine miles distance. His property in particular was a nest of thieves. They laid the whole country, from Stirling to Coupar of Angus, under contribution, obliging the inhabitants to pay them black-meal, as it is called, to save their property from being plundered. This was the centre of this kind of traffic. In the months of September and October they gathered to the number of about 300, built temporary huts, drank whiskey all the time, settled accounts for stolen cattle, and received balances. Every man then bore arms. It would have required a regiment to have brought a thief from that country."

BLACK ROD, USHER OF THE, is an officer of the House of Lords. He is styled the Gentleman Usher of the Black Rod, and is appointed by letters-patent from the crown. His deputy is styled the yeoman usher. They are the official messengers of the Lords, and either the gentleman or yeoman usher summons the Commons to the House of Lords when the royal assent is given to bills. "He executes orders for the commitment of parties guilty of breaches of privilege and contempt, and assists at the introduction of peers and other ceremonies." (May's *Parliament*, p. 156.)

BLA'SPHEMY (in Greek βλασφημία, *blasphémia*), a crime which is punished by the laws of most civilized nations, and which has been regarded of such enormity in many nations as to be punished with death. The word is Greek, but it has found its way into the English and several other modern languages, owing, it is supposed, to the want of native terms to express with precision and brevity the idea of which it is the representative. It is, properly speaking, an ecclesiastical term, most of which are Greek, as the term *ecclesiastical* itself, and the terms *baptism*, *bible*, and *bishop*. This has arisen out of the scriptures of the New Testament having been written in Greek, and those of the Old having in remote times been far better known in the Greek translation than in the original Hebrew.

Blasphemy is a compound word, of which the second part (*phe-m*) signifies to speak: the origin of the first part (*blas*) is not so certain; it is derived from βλάπτω (*blapto*), to hurt or strike, according to some. Etymologically therefore it denotes speaking so as to hurt; the using to a person's face reproachful and insulting expressions. But others derive the first part of the compound from βλάξ. (Passow's Schneider.) In this general way it is used by Greek writers, and even in the New Testament; as in 1 Tim. vi. 4, "Whereof cometh envy, strife, railings, evil surmisings," where the word rendered "railings" is in the original "blasphemies." In Eph. iv. 31, "Let all bitterness, and wrath, and anger, and clamour, and evil-speaking be put away from you," where "evil-speaking" represents the "blasphemy" of the original. In a similar passage, Col. iii. 8, the translators have retained the "blasphemy" of the original, though what is meant is probably no more than ordinary insulting or reproachful speech. Thus also in Mark vii. 22, our Saviour himself, in enumerating various evil dispositions or practices, mentions "an evil eye, blasphemy, pride, foolishness," not meaning, as it seems, more than the ordinary case of insulting speech.

Blasphemy in this sense, however it is to be avoided as immoral and mischievous, is not marked as crime; and its suppression is left to the ordinary influence of morals and religion, and not provided for by law. In this sense indeed the word can hardly be said to be naturalized among us, though it may occasionally be found in the poets, and in those prose-writers who exercise an inordinate curiosity in the selection of their terms. But besides being used to denote insulting and opprobrious speech in general, it was used to denote speech of that kind of a peculiar nature, namely, when the object against which it was directed was a person esteemed sacred, but especially when against God. The word was used by the LXX. to represent the קלל of the original Hebrew, when translating the passage of the Jewish law which we find in Leviticus xxiv. 10-16; this is the first authentic account of the act of blasphemy being noticed as a crime, and marked by a legislator for punishment:—"And the son of an Israelitish woman, whose father was an Egyptian, went out among the children of Israel, and this son of the Israelitish woman and a man of Israel strove together in the camp: and the Israelitish woman's son blasphemed the name of the Lord, and cursed. And they brought him unto Moses, and they put him in ward, that the mind of the Lord might be showed them. And the Lord spake unto Moses saying, Bring forth him that hath cursed without the camp, and let all that heard him lay their hands upon his head, and let all the congregation stone him. And thou shalt speak unto the children of Israel saying, Whosoever curseth his God shall bear his sin, and he that blasphemeth the name of the Lord he shall surely be put to death, and all the congregation shall certainly stone him; as well the stranger, as he that is born in the land, when he blasphemeth the name of the Lord, shall be put to death." It is said that the Hebrew commentators on the law have some difficulty in defining exactly what is to be considered as included within the scope of the term "blasphemy" in this passage. But it seems from the text to be evidently that loud and vehement reproach, the result of violent and uncontrolled passion, which not unfrequently is vented not only against a fellow-mortal who offends, but at the same time against the majesty and sovereignty of God.

Common sense, applying itself to the text which we have quoted, would at once declare that this, and this only, constituted the crime against which, in the Mosaic code, the punishment of death was denounced. But among the later Jews, other things were brought within the compass of this law; and it was laid hold of as a means of opposing the influence of the teaching of Jesus Christ, and of giving the form of law to the persecution of himself and his followers. Thus to speak evilly or reproachfully of sacred things or places was construed into blasphemy. The charge against Stephen was that he "ceased not to speak blasphemous words against this holy place

and the law" (Acts vi. 13); and he was punished by stoning, the peculiar mode of putting to death prescribed, as we have seen, by the Jewish law for blasphemy. Our Lord himself was put to death as one convicted of this crime: "Again the high-priest asked and said unto him, Art thou the Christ, the son of the blessed? And Jesus said, I am; and ye shall see the Son of Man sitting on the right hand of power, and coming in the clouds of heaven. Then the high-priest rent his clothes and said, What need we any further witnesses? Ye have heard the blasphemy: what think ye? And they all condemned him to be guilty of death" (Mark xiv. 61-64). It was manifest that there was here nothing of violence or passion, nothing of any evil intention essential to constitute such a crime, nothing, indeed, but the declaration of that divine mission on which he had come into the world, and of which his miracles were intended to be the proof.

There are some instances of the use of the term in the New Testament, in which it is not easy to say whether the word is used in its ordinary sense of hurtful, injurious, and insulting speech, or in the restricted, and what may be called the forensic sense. Thus when it is said of Christ or his apostles that they were blasphemed, it is doubtful whether the writers intended to speak of the act as one of more than ordinary reviling, or to charge the parties with being guilty of the offence of speaking insultingly and reproachfully to persons invested with a character of more than ordinary sacredness: and even in the passage about the blasphemy against the Holy Ghost, it appears most probable from the context that blasphemy is there used in the sense of ordinary reviling, though the object against which it was directed gave to such reviling the character of unusual atrocity.

Among the canonists, the definition of blasphemy is made to include the denying of God, or the asserting of anything to be God which is not God,—anything, indeed, in the words of the 'Summa Angelica," voce "Blasfemia," which implies "quandam derogationem excellentis bonitatis alicujus et præcipue divinæ;" and this extended application of the term has been received in most Christian countries, and punishments have been affixed to the offence.

In our own country, by the common law, open blasphemy was punishable by fine and imprisonment, or other infamous corporal punishment. The kind of blasphemy which was thus cognizable is described by Blackstone to be "denying the being or providence of God, contumelious reproaches of our Saviour Christ, profane scoffing at the Holy Scripture, or exposing it to contempt and ridicule" (*Commentaries*, b. iv. c. iv.). All these heads, except the first, seem to spring immediately from the original sense of the word blasphemy, as they are that hurtful and insulting speech which the word denotes. And we suspect that whenever the common law was called into operation to punish persons guilty of the first of these forms of blasphemy, it was only when the denial was accompanied with opprobrious words or gestures, which seem to be essential to complete the true crime of blasphemy. Errors in opinion, even on points which are of the very essence of religion, were referred in England in early times to the ecclesiastics, as falling under the denomination of heretical opinions, to be dealt with by them as other heresies were. There is nothing in the statute-book under the word blasphemy till we come to the reign of King William III. In that reign an act was passed, the title of which is "An Act for the more effectual suppressing of blasphemy and profaneness." We believe that the statute-book of no other nation can show such an extension and comprehension as is given in this statute to the word blasphemy, unless, indeed, a statute of the Scottish parliament, which was passed not long before, viz. the Act of 1695, c. 11. The only other Scottish act is of Charles the Second's reign. The primitive and real meaning of blasphemy, and we may add of profaneness also, was entirely lost sight of, and the act was directed to the restraint of all free investigation of positions respecting things esteemed sacred. The more proper title would have been, "An Act to prevent the investigation of the grounds of belief in Divine revelation, and the nature of the

things revealed;" for that such is its object is apparent throughout the whole of it: "Whereas many persons have of late years openly avowed and published many blasphemous and infamous opinions contrary to the doctrines and principles of the Christian religion, greatly tending to the dishonour of Almighty God, and may prove destructive to the peace and welfare of this kingdom; wherefore for the more effectual suppressing of the said detestable crimes, be it enacted, that if any person or persons having been educated in, or at any time having made profession of, the Christian religion within this realm, shall, by writing, printing, teaching, or advised speaking, deny any one of the persons of the Holy Trinity to be God, or shall assert or maintain that there are more gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority," &c. These are the whole of the offences comprised in this act. The penalties are severe: disqualifications; incapacity to act as executor or guardian, or to receive legacies; three years' imprisonment. (Stat. 9 Will. III. c. 35.) If, however, within four months after the first conviction, the offender will renounce his error in open court, he is for that time discharged from all disabilities. The writings alluded to in the preamble were not, in any proper sense of the term, blasphemous. They were, for the most part, we believe universally, the work of sober-minded and well-disposed men, who, however mistaken they might be, were yet in the pursuit of truth, and seeking it in a direction in which it is especially of importance to mankind to find it. To prevent such inquiries by laws such as these is most unwise. There can be no solid conviction where there can be no inquiry. In a state where laws like this are acted on (happily, in this country, it is become a dead letter), Christianity can never have the seat she ought to have, not only in the affections, but in the rational and sober convictions of mankind. What we mean however at present to urge is, that the title of blasphemy in this statute is a palpable misnomer. The delivery either from the pulpit or the press of the results of reflection and inquiry applied to the divine authority of the Holy Scriptures, or of any particular book included within that term, to the claim of Christianity to be a divine institution, or to the claim of the doctrine of the Trinity to be received as part of Christianity, can never be regarded as blasphemy or profaneness, however in particular instances it may sometimes be accompanied by expressions which may bring the individual using them within the scope of a charge of blasphemy. Blackstone, in his chapter on offences against God and religion, does not treat of this statute in the section headed Blasphemy, but under Apostasy. Indeed, blasphemy, as Blackstone defines it, and profaneness, are still offences at common law, and may be prosecuted as such; for the statute of William is merely cumulative, as it is termed, and the common law offence, the prosecution and the punishment, remain as they were before the statute. (R. *v.* Carlile, 3 B and A. 161.)

We are surprised that such a statute could have been passed so near our own time; still more that such a title should have been prefixed to it. As to its main provision it remains in force. But in 1813, the number of persons who openly avowed that they did not consider the doctrine of the Trinity as possessed of sufficient support from the words of Scripture, when truly interpreted, to deserve assent, having greatly increased, and large congregations of them being found in most of the principal towns, several clergymen also of undoubted respectability, learning, and piety having seceded from the church on the ground that this doctrine as professed in the church was without sufficient authority, a bill was introduced into parliament to relieve such persons from the operation of this statute, and it passed without opposition. This act, which is commonly called Mr. Smith's Act, after the name of the late Mr. William Smith, then member for the city of Norwich, by whom it was introduced, is stat. 53 George III. c. 160.

The legal crime of blasphemy and profaneness is made by this statute of King William something entirely different from the crime when considered with reference to religion or morals. Few persons will

charge any guilt upon a man who, in the course of philosophic investigation, is brought at last to doubt respecting any of the great points of religious belief, after an investigation pursued with diligence, and under a sense of the high importance of the subject. Such a charge would be the result of bigotry alone, and would have no corresponding conviction in the heart of the person thus accused. Yet such a person may be morally guilty of blasphemy. He is morally guilty, if he suffer himself to be led to the use of gross and opprobrious expressions, such as are shocking to the common sense and common feelings of mankind, and abhorrent to the minds of all philosophic inquirers, and all persons who, in the spirit of seriousness, are seeking to know the truth in respect of things which are of the last importance to them. Whoever acknowledges the existence of God and his providence, and yet speaks of him, or still more to him, or of and concerning them, in the language of affront, or otherwise, indeed, than with a feeling of reverence correspondent to the dignity and awfulness of the subject, cannot be held morally guiltless: and when there is no such admission, there is at least a decency to be observed in treating or speaking of them which will be observed by all who have any spirit of seriousness, or any just regard for the peace and welfare of society.

At the same time it must also be admitted that a certain freedom must be allowed in respect of the manner in which questions referring to sacred subjects are treated. All things are not really sacred which many agree to call so. The term sacred may be made to cover any opinion however absurd, as witchcraft and the popular superstitions have sometimes taken shelter under it. It will scarcely be denied that it is morally right to attack opinions of this class, even though the mind of a nation is not sufficiently enlightened to discern the absurdity of them, with any weapons, even those of insult and ridicule; and that though the cry of blasphemy may be raised, yet that at the bar of sound reason such a person, so far from being justly chargeable with so odious a crime, may be rendering to the world the most essential service, by setting the absurdity of the opinion in that clear light in which it admits of being placed, and thus attracting to it the eyes of all observers. But opinions which have better pretension to be called sacred may not improperly be treated with a certain freedom that to those holding them shall be offensive. Very strong things in this way have been said against the doctrine of transubstantiation by Protestant writers, who have not been regarded by their fellow-Protestants as doing more than setting an erroneous doctrine in its true light, though the Roman Catholic will have a different opinion on the matter. So the Almighty Father, as he appears in the system of Christian faith which is called Calvinism, has by some been represented in characters which, to the sincere believer in that system, cannot but have been accounted blasphemous; while by those who hold the system to rest on a mistaken interpretation of Scripture it has been held to be no more than the real character in which that system invests him. There is in fact, when the subject is regarded as one of morals rather than of law, a relative and a positive blasphemy. That is blasphemy to one which is not so to another. And this should teach all persons a forbearance in the application of so odious a term. Strong and forcible expressions have had their use. Satire and ridicule may reach where plain argument will not go: but it behoves every man who ventures on the use of these weapons to consider the intention by which he is influenced, to look upon himself as one who is a debtor in an especial manner to the truth, and who has to satisfy himself that he aims at nothing but the increase of the knowledge and the virtue and happiness of society.

BLOCKADE, LAW OF. Whenever a war takes place, it affects in various ways all states which have any connexion with the belligerent powers. A principal part accordingly of the science of international law is that which respects the rights of such neutral states. For obvious reasons this is also the most intricate part of the subject. There is here a general

rule, namely, that the neutral ought not to be at all interfered with, conflicting with a great variety of exceptions, derived from what is conceived to be the right of each of the belligerents to prosecute the object of annoying its enemy, even though (within certain limits) it inflicts injury upon a third party. In the first place there is to be settled the question of what these limits are. It evidently would not do to say that the belligerent shall not be justified in doing anything which may in any way inconvenience a neutral power; for such a principle would go nigh to tie up the hands of the belligerent altogether, inasmuch as almost any hostile act whatever might in this way be construed into an injury by neutral states. They might complain, for instance, that they suffered an inconvenience, when a belligerent power seized upon the ships of its enemy that were on their way to supply other countries with the ordinary articles of commerce. On the other hand, there is a manifest expediency in restricting the exercise of the rights of war, for the sake of the protection of neutrals, to as great an extent as is compatible with the effectual pursuit of the end for which war is waged. Accordingly it has been commonly laid down, that belligerents are not to do anything which shall have a greater tendency to incommode neutrals than to benefit themselves. It is evident however that this is a very vague rule, the application of which must give rise to many questions.

It is by this rule that publicists have endeavoured to determine the extent to which the right of blockade may properly be carried, and the manner in which it ought to be exercised. We can only notice the principal conclusions to which they have come, which indeed, so far as they are generally admitted, are nothing more than a set of rules fashioned on positive international morality (that is, so much of positive morality as states in general agree in recognising) by judicial decision. Accordingly perhaps the most complete exposition of the modern doctrine of blockade may be collected from the admirable judgments delivered during the course of the last war by the late Lord Stowell (Sir William Scott), while presiding over the High Court of Admiralty, which have been ably reported by Dr. Edwards and Sir Charles Robinson. A very convenient compendium of the law, principally derived from this source, has been given by Mr. Joseph Chitty in his work entitled 'A Practical Treatise on the Law of Nations,' 8vo. Lond. 1812. The various pamphlets and published speeches of Lord Erskine, Mr. Stephen, Mr. Brougham, Lord Ashburton (Mr. Alexander Baring), Lord Sheffield, and others, which appeared in the course of the controversy respecting the Orders in Council, may also be consulted with advantage. To these may be added various articles in volumes xi. xii. xiv. and xix. of the 'Edinburgh Review,' particularly one in volume xix. pp. 290—317, headed "Disputes with America," written immediately before the breaking out of the last war with that country.

The first and the essential circumstance necessary to make a good blockade is, that there be actually stationed at the place a sufficient force to prevent the entry or exit of vessels. Sir William Scott has said (case of the Vrow Judith, Jan. 17, 1799), "A blockade is a sort of circumvallation round a place, by which all foreign connexion and correspondence is, as far as human power can effect it, to be entirely cut off." Such a check as this, it is evident, is absolutely necessary to prevent the greatest abuse of the right of blockade. The benefit accruing to a belligerent from blockading its enemy's ports, by which it claims the privilege of seizing any vessel that attempts to touch or has actually touched at such ports, and the inconvenience thereby inflicted upon neutrals, would both, without such a provision, be absolutely unlimited. In point of fact, belligerents have frequently affected, in their declarations of blockade, to overstep the boundaries thus set to the exercise of the right. France, as Mr. Brougham showed in his speech delivered before the House of Commons, 1st April, 1808, in support of the petitions of London, Liverpool, and other towns, against the orders in council, had repeatedly done so both since and previous to the Revolution. She did so in 1739 and in 1756, and also in 1796, in 1797, and in 1809.

But in none of these instances were her pretended blockades either submitted to by neutrals, or even to any considerable extent attempted to be enforced by herself. There can be no doubt that no prize-court would now condemn a vessel captured for the alleged violation of any such mere nominal blockade. It has, however, been decided that the blockade is good although the ships stationed at the place may have been for a short time removed to a little distance by a sudden change of wind, or any similar cause.

The second, and only other circumstance necessary to constitute a blockade which the prize-courts will recognise, is, that the party violating it shall be proved to have been aware of its existence. "It is at all times most convenient," Lord Stowell has said in one of his judgments (see case of the Rolla, in Robinson's 'Reports'), "that the blockade should be declared in a public and distinct manner." There ought to be a formal notification from the blockading power to all other countries. Nevertheless this is not absolutely required, and a neutral will not be permitted with impunity to violate a blockade of which the master of the vessel may reasonably be presumed to be aware from the mere notoriety of the fact. Lord Stowell, however, has said that, whereas when a notification has been formally given, the mere act of sailing with a contingent destination to enter the blockaded port if the blockade shall be found to be raised, will constitute the offence of violation, it might be different in the case of a blockade existing *de facto* only.

With regard to neutral vessels lying at the place where the blockade commences, the rule is, that they may retire freely after the notification of the blockade, taking with them the cargoes with which they may be already laden; but they must not take in any new cargo.

The offence of violation is effected either by going into the place blockaded, or by coming out of it with a cargo taken in after the commencement of the blockade. But vessels must not even approach the place with the evident intention of entering if they can effect their object. It would even appear that a vessel will render itself liable to seizure and condemnation if it can be proved to have set sail with that intention. In such cases however it must be always difficult for the captors to make out a satisfactory case.

After a ship has once violated a blockade, it is considered that the offence is not purged, in ordinary circumstances, until she shall have returned to the port from which she originally set out; that is to say, she may be seized at any moment up to the termination of her homeward voyage. If the blockade however has been raised before the capture, the offence is held to be no longer punishable, and a judgment of restitution will be pronounced.

The effect of a violation of blockade to the offending party when captured is the condemnation usually of both the ship and the cargo. If however it can be shown that the parties to whom the cargo belongs were not implicated in the offence committed by the master of the ship, the cargo will be restored. It has sometimes, on the contrary, happened that the owners of the cargo have been found to be the only guilty parties, in which case the judgment has been for the condemnation of the cargo and the restitution of the ship.

If a place, as generally happens in the case of maritime blockades, be blockaded by sea only, a neutral may carry on commerce with it by inland communications. The neutral vessel may enter a neighbouring port not included in the blockade with goods destined to be carried thence over land into the blockaded place.

When a place has once been notified to be blockaded, a counter notice should always be given by the blockading power when the blockade has ceased. The observance of this formality is obviously conducive to the general convenience, but there are of course no means of punishing a belligerent for its neglect.

In this country a blockade is ordered and declared by the king in council. It is held however that a commander of a king's ship on a station so distant as to preclude the government at home from interfering with the expedition necessary to meet the change of circumstances, may

have authority delegated to him to extend or vary the blockade on the line of coast on which he is stationed. But the courts will not recognise a blockade altered in this manner within the limits of Europe. It appears to be necessary for the sake of the public convenience that the power of declaring a blockade should, as far as possible, be exercised only by the sovereign power in a state; but it would perhaps be going too far to insist that it should in no circumstances be delegated to a subordinate authority. This would seem to be something very like interfering with the internal arrangements of states.

Some very important questions connected with the law of blockade were brought into discussion in the course of the last war by the Berlin decree of Bonaparte and the orders of the king of Great Britain in council.

The Berlin decree, which was issued on the 21st of November, 1806, declared the whole of the British islands in a state of blockade, and all vessels, of whatever country, trading to them, liable to be captured by the ships of France. It also shut out all British vessels and produce both from France and from all the other countries then subject to the authority of the French emperor. By a subsequent decree, issued soon after in aid of this, all neutral vessels were required to carry what were called letters or certificates of origin, that is, attestations from the French consuls of the ports from which they had set out, that no part of their cargo was British. This was the revival of an expedient which had been first resorted to by the Directory in 1796.

There can be no question as to the invalidity of this blockade, according to the recognised principles of the law of nations: the essential circumstance of a good blockade, namely, the presence of a force sufficient to maintain it, was here entirely wanting. And it is proper also to state that a certain representation of the nature of the decree, much insisted upon by some of the writers and pamphleteers in the course of the subsequent discussions, with the view of mitigating its absurdity and violence, that is to say, that it was never attempted to be enforced, is now well known not to have been strictly correct. Many vessels of neutrals were actually captured and condemned by the French courts, in conformity with it, during the first few months which followed its promulgation.

The first step in resistance to the Berlin decree was taken by Great Britain on the 7th of January, 1807, while the Whig ministry of which Mr. Fox had been the head was still in office, by an order in council subjecting to seizure all neutral vessels trading from one hostile port in Europe to another with property belonging to an enemy. This order, however, is said to have been extensively evaded; while, at the same time, new efforts began to be made by the French emperor to enforce the Berlin decree. It is admitted that in the course of the months of September and October, 1807, several neutral vessels were captured for violation of that decree; that a considerable alarm was excited among the mercantile classes in this country by these acts of violence; that the premium of insurance rose; and that some suspension of trade took place. (See 'Edin. Rev.' vol. xiv. p. 442, &c.) It is contended by the supporters of the British orders in council, that the effect of the Berlin decree upon the commerce of this country during the months of August, September, and October in particular, was most severely felt. (See Mr. Stephen's 'Speech.')

In these circumstances the British government, at the head of which Mr. Perceval now was, issued further orders in council, dated the 11th and 21st of November, 1807. These new orders declared France and all its tributary states to be in a state of blockade, and all vessels subject to seizure which were either found to have certificates of origin on board, or which should attempt to trade with any of the parts of the world thus blockaded. All neutral vessels, intended for France or any other hostile country, were ordered in all cases to touch first at some British port, and to pay custom-dues there, after which they were, in certain cases, to be allowed to depart to their destination. In all cases, in like manner, vessels clearing out from a hostile port were, before proceeding farther

on their voyage, to touch at a British port.

The predicament in which neutral countries were placed by this war of edicts was sufficiently embarrassing. The effect of the recent British orders in council is thus distinctly stated by a writer in the 'Edinburgh Review,' vol. xii. p. 229:—"Taken in combination with the Berlin decree, they interdict the whole foreign trade of all neutral nations; they prohibit everything which that decree had allowed; and they enjoin those very things which are there made a ground of confiscation."

By a subsequent decree, issued by Bonaparte from Milan on the 27th of December, 1807, the British dominions in all quarters of the world were declared to be in a state of blockade, and all countries were prohibited from trading with each other in any articles produced or manufactured in the parts of the earth thus put under a ban. Various additional orders in council were also promulgated from time to time, in explanation or slight modification of those last mentioned.

It is asserted by the opponents of this policy of the British government, that the result was a diminution, in the course of the following year, of the foreign trade of this country, to the extent of fourteen millions sterling. It is even contended that, but for some counteracting causes which happened to operate at the same time, the falling off would have been nearly twice as great. (*Edin. Rev.*, vol. xiv. p. 442, &c.)

The principal branch of trade affected was that with America, which was at this time the only great neutral power in existence; and which in that capacity had, previous to the Berlin decree, been an annual purchaser of British manufactures to a large amount, partly for home consumption, but to a much larger extent for the supply of the Continent. Both the Americans, therefore, and the various parties in this country interested in this export trade, exclaimed loudly against the edicts of the two belligerent powers. It appears that the American government, on application to that of France, obtained an assurance which was deemed satisfactory, though not in an official form, that the Berlin decree would not be put in force against American vessels; but when this was urged as a sufficient reason for the revocation of the English orders in council, the English government refused to pay any attention to it, maintaining that America should insist upon a public renunciation of the obnoxious French decree.

The subject was brought before parliament in March, 1808, by motions made in both houses asserting the illegality of the orders in council. On the 1st of April the merchants of London, Liverpool, and other towns, who had petitioned for the repeal of the orders, on the ground of their injurious operation upon the commercial interests of the country, were heard at the bar by their counsel, Mr. Brougham, whose speech, as has been already mentioned, was afterwards published. The result was, that ministers consented to the institution of an inquiry into the effect of the orders, in the course of which many witnesses were brought forward both by the petitioners and by the ministers in support of their respective views. But no immediate result followed, either from this inquiry, or from a motion made in the House of Commons on the 6th of March, 1809, by Mr. Whitbread, declaratory of the expediency of acquiescing in the propositions made by the government of the United States.

On the 26th of April, however, a new order in council was issued, which, it was contended by the opponents of the policy hitherto pursued, did in fact amount to an abandonment of the whole principle of that policy. On the pretext that the state of circumstances, so far as the Continent was concerned, had undergone a complete change by the insurrection of the Spaniards, the blockade, which had formerly extended to all the countries under the authority of France, was now confined to France itself, to Holland, to part of Germany, and to the north of Italy; and the order which condemned vessels for having certificates of origin on board was rescinded. On the other hand, the interdict against trading with the blockaded ports was apparently made more strict and severe by the revocation

of the liberty formerly given, in certain cases, to neutral vessels to sail for an enemy's port after having first touched at one in Great Britain. Upon this point, however, some important modifications were made by subsequent orders. A system was introduced of licensing certain vessels. to proceed to hostile ports after having first touched and paid custom-dues at a British port; and this was eventually carried so far, that at last the number of such licences granted is said to have exceeded 16,000.

The position, however, in which America was still placed was such as almost to force her to go to war either with England or France. In this state of things, in the spring of 1812 a vigorous effort was again made by the opposition in parliament to obtain the entire removal of the orders in council. In the Lords, a motion was made by the Marquis of Lansdowne on the 28th of February for a select committee of inquiry into the effect of the orders, but was negatived by a majority of 135 to 71. On the 3rd of March a similar motion made in the Commons by Mr. Brougham was also rejected by a majority of 216 to 144. On the 3rd of April, however, an order of the prince regent in council appeared in the 'Gazette,' revoking entirely the former orders in so far as regarded America, but only on the condition that the government of the United States should also revoke an order by which it had some time previously excluded British armed vessels from its ports, while it admitted those of France. This conditional revocation being still considered unsatisfactory, Lord Stanley, on the 28th of April, moved in the Commons for a committee of inquiry into the subject generally, and the discussion ended by ministers giving their assent to the motion. Many witnesses were in consequence examined, both by this committee and by another of the Lords, which sat at the same time, having been obtained on the 5th of May on the motion of Earl Fitzwilliam. When the examinations had been brought to a close, Mr. Brougham, on the 16th of June, moved in the Commons, that the crown should be addressed to recall or suspend the orders unconditionally. At the termination of this discussion ministers intimated that they were prepared to concede the question; and accordingly, on the 23rd of the same month, an unconditional suspension of the orders, in so far as America was concerned, appeared in the 'Gazette.' By this time, however, the government of the United States had declared war, on the ground, as is well known, not only of the orders in council, but of other alleged acts of injustice on the part of the British government.

The policy of the British government in issuing the orders in council of November, 1807, was maintained by its opponents to be wrong, on the double ground that it was both inexpedient and not warranted by the principles of the law of nations. On this latter head it was argued that no violation of international law by one belligerent power could justify the other in pursuing a similar course.

The question, like all others connected with the law of blockade, appears to be one which must be determined chiefly by a reference to the rights of neutral powers, as regulated by the principle already stated, namely, that no neutral power shall be annoyed or incommoded by any warlike operation, which shall not have a greater tendency to benefit the belligerent than to injure the neutral. In this case the benefit which the British government professed to expect from its retaliatory policy, which was the excitement of a spirit of resistance to the original French decree both in neutral countries and among the people of France themselves, was extremely problematical from the first, and turned out eventually to be wholly delusive. On the other hand, the injury to neutrals was certain and of large amount, tending in fact to interdict and, as far as possible, to put a stop to the entire peaceful commercial intercourse of the world.

The orders in council were sometimes defended, for want of better reasons, on a very peculiar ground, namely, on that of the pecuniary advantage which the country derived from the captures made under them, from the increase of port dues which they occasioned, and from the revenue obtained by the licensing system.

In resting the justification of the orders in council upon the ground of their expediency, their defenders of course contended that they were essential to the effective prosecution of the war, and that we were therefore justified in disregarding the injury which they might indirectly inflict upon neutrals. It was anticipated, as we have observed above, in the first place, that the pressure of their operation would excite both the American government, and even the inhabitants of France themselves, and of the various countries of Europe subject to the French emperor, to insist upon the revocation of the Berlin decree. But the effect anticipated was not produced. Neither the people of France, nor of any other portion of Bonaparte's empire, rose or threatened to rise in insurrection on account of the stoppage of trade occasioned by the edicts of the two belligerent powers; and America went to war, not with France, but with us, choosing to reserve the assertion of her claims for wrongs suffered under the Berlin decree to another opportunity, while she determined to resist our orders in council by force of arms. But secondly, it was contended that the policy adopted by the orders in council was necessary to save our commerce from what would otherwise have been the ruinous effects of the Berlin decree. This argument, also, if its validity is to be tried by the facts as they actually fell out, will scarcely appear to be well founded. The preponderance of the evidence collected in the course of the successive inquiries which took place was decidedly in favour of the representations made by the opponents of the orders, who maintained that, instead of having proved any protection or support to our foreign trade, they had most seriously embarrassed and curtailed it. The authors of the orders themselves must indeed be considered to have come over to this view of the matter, when they consented, as they at length did, to their entire repeal.

In the actual circumstances of the present case, the convenient interposition of America, by means of which British manufactured goods were still enabled to find their way in large quantities to the Continent in spite of the Berlin decree, would seem to have been the last thing at which the government of this country should have taken umbrage, or which it should have attempted to put down. As the French ruler found it expedient to tolerate this interposition, in open disregard of his decree, it surely was no business of ours to set ourselves to cut off a channel of exit for our merchandise, so fortunately left open when nearly every other was shut.

BOARD, a word used to denote, in their collective capacity, certain persons to whom is intrusted the management of some office or department, usually of a public or corporate character. Thus the lords of the treasury and admiralty, the commissioners of customs, the lords of the committee of the privy council for the affairs of trade, &c., are, when met together for the transaction of the business of their respective offices, styled the Board of Treasury, the Board of Admiralty, the Board of Customs, the Board of Trade, &c. The same word is used to designate the persons chosen from among the proprietors to manage the operations of any joint-stock association, who are styled the Board of Directors. In parochial government the guardians of the poor, &c. are called the Board of Guardians, &c. The word *bureau* in France is an equivalent expression.

BONA FIDES and BONA FIDE is an expression often used in the conversation of common life. It is also often in the mouths of lawyers, and it occurs in Acts of Parliament, where (in some cases at least) it means that the acts referred to must not be done to evade the law, or in fraud of the law, as we sometimes express it, following the Roman phraseology (in fraudem legis). It appears to be used pursuant to the meaning of the words, in the sense of good faith, which implies the absence of all fraud or deceit. Bona Fides is therefore opposed to fraud, and is a necessary ingredient in contracts, and in many acts which do not belong to contracts. How much fraud may be legally used, or what is the meaning of Bona Fides in any particular case, will depend on the facts. Many things are not legal frauds, and many things are legally done

Bonâ Fide, which the common notions of fair dealing condemn.

The phrase Bona Fides originated with the Romans, and it is opposed to Mala Fides, or Dolus (fraud). The notion of equity (æquitas), equality, fair dealing, equal dealing, is another form of expressing Bona Fides. He who possessed the property of another bonâ fide, might, so far as the general rules of law permitted, acquire the ownership of such property by use (usucapio). In this case bona fides consisted in believing that his possession originated in a good title, or, as Gaius (ii. 43) expresses it, when the possessor believed that he who transferred the thing to him was the owner.

The Romans classed under the head of bonæ fidei obligationes a great variety of contracts, and also of legal acts, as buying, selling, mandatum [AGENT], guardianship, &c. Actions founded on these obligations were called "bonæ fidei actiones," and the legal proceedings were called "bonæ fidei judicia." The name arose from the formula "ex bona fide," which was inserted in the Intentio, or that part of the Prætor's formula (instruction to the judex) which had reference to the plaintiff's claim, and empowered the judex to decide according to the equity of the case, ex fide bona. Sometimes the expression "æquus melius" was used instead of ex fide bona. Thus actions founded on contract, or on acts which bore an analogy to contract, were distributed into the two classes of Condictiones, or stricti judicii, or stricti juris actiones, and bonæ fidei actiones, or actions in which the inquiry was about the strict legal rights of the parties and actions in which the general principles of fair dealing were to be taken into the account. The object which was attained by the bonæ fidei judicia bears an analogy to the relief which may be sometimes obtained in a Court of Equity in England, when there is none in a Court of Law.

The Intentio in the class of actions called Condictiones was in this form: quidquid (ob eam rem) Numerium Negidium Aulo Egerio dare facere oportet ex fide bona—whatever Numerius Negidius ought pursuant to good faith to give or do to Aulus Egerius (Gaius, ii. 47). All the actions in which this formula is used were actions arising out of contracts or quasi contracts; and not actions founded on delict, nor actions in which the ownership of a thing was in question. By leaving out the expression "ex bona fide" in the Intentio just quoted, the action is reduced to an action stricti juris. The bonæ fidei actio, by virtue of the formula (quidquid, &c.), referred to a thing not determined: the stricti juris actio might refer to a thing determined, as a particular field or slave, which was the subject of a contract, or to a thing undetermined (quidquid). Therefore all indeterminate actions (incertæ actiones) were not bonæ fidei actiones, but all bonæ fidei actiones were incertæ actiones.

BONA NOTABILIA. [EXECUTOR.]

BOOK TRADE. The substance of this notice is condensed, with slight alterations here and there, from a 'Postscript' to 'William Caxton: a Biography,' by Mr. Charles Knight, which gives a history of the "Progress of the Press in England." The subject may be divided into five periods:—

I. From the introduction of printing by Caxton to the accession of James I., 1603.

II. From 1603 to the Revolution, 1688.

III. From 1688 to the accession of George III., 1760.

IV. From 1760 to 1800.

V. From 1800 to 1843.

I. One of the earliest objects of the first printers was to preserve from further destruction the scattered manuscripts of the ancient poets, orators, and historians. But after the first half-century of printing men of letters anxiously demanded copies of the ancient classics. The Alduses and Stephenses and Plantins produced neat and compactly printed octavos and duodecimos, instead of the expensive folios of their predecessors. The instant that they did this, the foundations of literature were widened and deepened. They probably at first overrated the demand; indeed, we know they did so, and they suffered in consequence; but a new demand very soon followed upon the first demand for cheap copies of the ancient classics. The first English Bible was bought up and

burnt; those who bought the Bibles contributed capital for making new Bibles, and those who burnt the Bibles by so doing advertised them. The first printers of the Bible were, however, cautious—they did not see the number of readers upon which they were to rely for a sale. In 1540 Grafton printed only 500 copies of his complete edition of the Scriptures: and yet, so great was the rush to this new supply of the most important knowledge, that we have existing 326 editions of the English Bible, or parts of the Bible, printed between 1526 and 1600.

The early English printers did not attempt what the continental printers were doing for the ancient classics. Down to 1540 no Greek book had appeared from an English press. Oxford had only printed a part of Cicero's Epistles; Cambridge, no ancient writer whatever: only three or four old Roman writers had been reprinted, at that date, throughout England. The English nobility were, probably, for more than the first half-century of English printing, the great encouragers of our press: they required translations and abridgments of the classics—versions of French and Italian romances, old chronicles, and helps to devout exercises. Caxton and his successors abundantly supplied these wants, and the impulse to most of their exertions was given by the growing demand for literary amusement on the part of the great. But the priests strove with the laity for the education of the people; and not only in Protestant, but in Catholic countries, were schools and universities everywhere founded. Here, again, was a new source of employment for the press—A, B, C's, or Absies, Primers, Catechisms, Grammars, Dictionaries, were multiplied in every direction. Books became, also, during this period, the tools of professional men. There were not many works of medicine, but a great many of law. The people, too, required instruction in the laws which they were required to obey; and thus the Statutes, mostly written in French, were translated and abridged by Rastell, an eminent law-printer. Even as early as the time of Caxton the press was employed to promulgate new laws.

Taken altogether, the activity of the press of England, during the first period of our inquiry, was very remarkable. To William Caxton, our first printer, are assigned 64 works.

Wynkyn de Worde, the able assistant and friend of Caxton, produced the large number of 408 books from 1493 to 1535, that is, upon an average, he printed 10 books in each year. To Richard Pynson, supposed to have been an assistant of Caxton, 212 works are assigned, between 1493 and 1531.

From the time of Caxton's press to that of Thomas Hacket, with whose name Dr. Dibdin's work concludes, we have the enumeration of 2926 books. The 'Typographical Antiquities' of Ames and Herbert comes down to a later period. They recorded the names of three hundred and fifty printers in England and Scotland, or of foreign printers engaged in producing books for England, who were working between 1474 and 1600. The same authors have recorded the titles (we have counted with sufficient accuracy to make the assertion) of nearly 10,000 distinct works printed among us during the same period. Many of these works, however, were only single sheets; but, on the other hand, there are doubtless many not here registered. Dividing the total number of books printed during these 130 years, we find that the average number of distinct works produced each year was 75.

Long after the invention of printing and its introduction into England, books were dear. In the 'Privy Purse Accounts of Elizabeth of York,' published by Sir H. Nicolas, we find that, in 1505, twenty pence were given for a 'Primer' and a 'Psalter.' In 1505 twenty pence would have bought half a load of barley, and were equal to six days' work of a labourer. In 1516 'Fitzherbert's Abridgment,' a large folio law-book, the first published, was sold for forty shillings. At that time forty shillings would have bought three fat oxen. Books gradually became cheaper as the printers ventured to rely upon a larger number of purchasers. The exclusive privileges that were given to individuals for printing all sorts of books, during the reigns of Henry VIII., Mary, and Elizabeth—although

they were in accordance with the spirit of monopoly which characterized that age, and were often granted to prevent the spread of books—offer a proof that the market was not large enough to enable the producers to incur the risk of competition. One with another, 200 copies may be estimated to have been printed of each book during the period we have been noticing; we think that proportion would have been quite adequate to the supply of the limited number of readers —to many of whom the power of reading was a novelty unsanctioned by the practice of their forefathers.

II. The second period of the English press, from the accession of James I. to the Revolution, was distinguished by pedantry at one time, to which succeeded the violence of religious and political controversy; and then came the profligate literature of the Restoration. The press was exceedingly active during the politico-religious contest. There is, in the British Museum, a collection of 2000 volumes of Tracts issued between the years 1640 and 1660, the whole number of which several publications amounts to the enormous quantity of 30,000: The number of impressions of new books unconnected with controversial subjects must have been very small during this period.

After the Restoration an act of parliament was passed that only twenty printers should practise their art in the kingdom. We see by a petition to parliament in 1666, that there were only 140 "working printers" in London. They were quite enough to produce the kind of literature which the court required.

At the fire of London, in 1666, the booksellers dwelling about St. Paul's lost an immense stock of books in quires, amounting, according to Evelyn, to the value of 200,000*l.*, which they were accustomed to stow in the vaults of the metropolitan cathedral, and of other neighbouring churches. At that time the people were beginning to read again, and to think;—and as new capital rushed in to replaee the consumed stock of books, there was once more considerable activity in printing. The laws that regulated the number of printers soon after fell into disuse, as they had long fallen into contempt. We have before us a catalogue (the first compiled in this country) of "all the books printed in England since the dreadful fire, 1666, to the end of Trinity Term, 1680," which catalogue is continued to 1685, year by year. A great many—we may fairly say one-half—of these books, are single sermons and tracts. The whole number of books printed during the fourteen years from 1666 to 1680, we ascertain, by counting, was 3550, of which 947 were divinity, 420 law, and 153 physic,—so that two-fifths of the whole were professional books; 397 were school-books, and 253 on subjects of geography and navigation, including maps. Taking the average of these fourteen years, the total number of works produced yearly was 253; but deducting the reprints, pamphlets, single sermons, and maps, we may fairly assume that the yearly average of new books was much under 100. Of the number of copies constituting an edition we have no record; probably it must have been small, for the price of a book, as far as we can ascertain it, was considerable. In a catalogue, with prices, printed twenty-two years after the one we have just noticed, we find that the ordinary cost of an octavo was *five shillings.*

III. We have arrived at the third stage of this rapid sketch—from the Revolution to the accession of George III.

This period will ever be memorable in our history for the creation, in great part, of periodical literature. Till newspapers, and magazines, and reviews, and cyclopædias were established, the people, even the middle classes, could not fairly be said to have possessed themselves of the keys of knowledge.

The publication of *intelligence* began during the wars of Charles I. and his Parliament. But the 'Mercuries' of those days were little more than occasional pamphlets. Burton speaks of a "Pamphlet of News." Before the Revolution there were several London papers, regulated, however, by privileges and surveyors of the press. Soon after the beginning of the eighteenth century (1709) London had one daily paper, fifteen three times a week, and one twice a week: this was before a stamp-duty was imposed on papers. After the stamp-duty in 1724

there were three daily papers, six weekly, and ten three times a week. Provincial newspapers had already been established in several places. In 1731, Cave, at his own risk, produced the first Magazine printed in England—the 'Gentleman's.' Its success was so great, that in the following year the booksellers, who could not understand Cave's project till they knew its value by experiment, set up a rival magazine, 'The London.' In 1749 the first Review, 'The Monthly,' was started; and in a few years was followed by 'The Critical.'

The periodical literature of this period greatly reduced the number of merely temporary books; and it had thus the advantage of imparting to our literature a more solid character. Making a proportionate deduction for the pamphlets inserted in the catalogues already referred to, it still appears that the great influx of periodical literature, although constituting a most important branch of literary commerce, had in some degree the effect of narrowing the publication of new books; and perhaps wholesomely so. It appears from a 'Complete Catalogue of Modern Books published from the beginning of the century to 1756;'—from which "all pamphlets and other tracts" are excluded, that in these fifty-seven years 5280 new works appeared, which exhibits only an average of ninety-three new works each year. It seems probable that the numbers of an edition printed had been increased; for, however strange it may appear, the general prices of the works in this catalogue are as low, if not lower, than in a priced catalogue which we also have of books printed in the years 1702 and 1703. A quarto published in the first half of the last century seems to have averaged from 10*s.* to 12*s.* per volume; an octavo, from 5*s.* to 6*s.*; and a duodecimo from 2*s.* 6*d.* to 3*s.* In the earlier catalogue we have mentioned, pretty much the same prices exist: and yet an excise had been laid upon paper; and the prices of authorship, even for the humblest labours, were raised. We can only account for this upon the principle, that the publishers of the first half of the eighteenth century knew their trade, and, printing larger numbers, adapted their prices to the extension of the market. They also, in many cases, lessened their risk by publishing by subscription—a practice now almost gone out of use from the change of fashion, but possessing great advantages for the production of costly books. This was in many respects the golden age for publishers, when large and certain fortunes were made. Perhaps much of this proceeded from the publishers aiming less to produce novelty than excellence—selling *large impressions of few books*, and not distracting the public with their noisy competition in the manufacture of new wares for the market of the hour. Publishers thus grew into higher influence in society. They had long ceased to carry their books to Bristol or Stourbridge fairs, or to hawk them about the country in auctions. The trade of books had gone into regular commercial channels.

IV. The period from the accession of George III. to the close of the eighteenth century, is marked by the rapid increase of the demand for popular literature, rather than by any prominent features of orginality in literary production. Periodical literature spread on every side; newspapers, magazines, reviews, were multiplied; and the old system of selling books by hawkers was extended to the rural districts and small provincial towns. Of the *number-books* thus produced, the quality was indifferent, with a few exceptions; and the cost of these works was considerable. The principle, however, was then first developed, of extending the market by coming into it at regular intervals with fractions of a book, so that the humblest customer might lay by each week in a savings-bank of knowledge. This was an important step, which has produced great effects, but which is even now capable of a much more universal application than it has ever yet received. Smollett's 'History of England' was one of the most successful number-books; it sold to the extent of 20,000 copies.

The rapid growth of the publication of *new* books is best shown by examining the catalogues of the latter part of the eighteenth century, passing over the earlier years of the reign of George III. In the 'Modern Catalogue of Books,' from 1792 to the end of 1802, eleven

years, we find that 4096 *new* works were published, exclusive of reprints not altered in price, and also exclusive of pamphlets: deducting one-fifth for reprints, we have an average of 372 new books per year. This is a prodigious stride beyond the average of 93 per year of the previous period. From some cause or other, the selling-price of books had increased, in most cases 50 per cent., in others 100 per cent. The 2*s.* 6*d.* duodecimo had become 4*s.*; the 6*s.* octavo, 10*s.* 6*d.*; and the 12*s.* quarto, 1*l.* 1*s.* It would appear from this that the exclusive market was principally sought for new books; that the publishers of novelties did not rely upon the increasing number of readers; and that the periodical works constituted the principal supply of the many. The aggregate increase of the commerce in books must, however, have become enormous, when compared with the previous fifty years.

V. Of the last period—the most remarkable for the great extension of the commerce in books—we shall present the accounts of the first 27 years collectively, and of the last 16 years in detail.

The number of new publications issued from 1800 to 1827, including reprints altered in size and price, but excluding pamphlets, was, according to the London catalogue, 19,860. Deducting one-fifth for the reprints, we have 15,888 new books in 27 years; showing an average of 588 new books per year, being an increase of 216 per year over the last 11 years of the previous century. Books, however, were still rising in price. The 4*s.* duodecimo of the former period became 6*s.*, or was converted into a small octavo at 10*s.* 6*d.*; the 10*s.* 6*d.* octavo became 12*s.* or 14*s.*, and the guinea quarto very commonly two guineas. The demand for new books, even at the very high cost of those days, was principally maintained by Reading Societies and Circulating Libraries. When these new modes of diffusing knowledge were first established, it was predicted that they would destroy the trade of publishing. But the Reading Societies and the Circulating Libraries, by enabling many to read new books at a small expense, created a much larger market than the desires of individual purchasers for ephemeral works could have formed; and a very large class of books was expressly produced for this market.

But a much larger class of book-buyers had sprung up, principally out of the middle ranks. For these a new species of literature had to be produced,—that of books conveying sterling information in a popular form, and published at a very cheap rate. In the year 1827 'Constable's Miscellany' led the way in this novel attempt; in the same year the Society for the Diffusion of Useful Knowledge, which had been formed in November, 1826, commenced its operations; and several publishers of eminence soon directed their capital into the same channels. Subsequently editions of our great writers have been multiplied at very reasonable prices; and many a tradesman's and mechanic's house now contains a well selected stock of books, which, through an annual expenditure of 2*l.* or 3*l.*, has brought the means of intellectual improvement, and all the tranquil enjoyment that attends the practice of family reading, home to a man's own fireside.

The increasing desire for knowledge among the masses of the people was, however, not yet supplied. In 1832 the 'Penny Magazine' of the Society for the Diffusion of Useful Knowledge, and 'Chambers's Journal' commenced to be published; and subsequently the 'Saturday Magazine.' The 'Penny Sheet' of the reign of Queen Anne was revived in the reign of William IV., with a much wider range of usefulness. It was said by some that the trade in books would be destroyed. They asserted also that the rewards of authorship would be destroyed, necessarily, at the same time. 'The Penny Cyclopædia' of the Society for the Diffusion of Useful Knowledge was deemed the most daring attempt at this double destruction. That work has returned about 150,000*l.* to the commerce of literature, and 40,000*l.* have been distributed amongst the authors and artists engaged in its production, of which sum more than three-fourths have been laboriously earned by the diligence of the writers.

There is a mode, however, of testing

whether cheap literature has destroyed the publication of *new books*, without including reprints and pamphlets. We take the four years from 1829 to 1832, as computed by ourselves, from the London Catalogues; and the four years from 1839 to 1842, as computed by Mr. M'Culloch in the last edition of his 'Commercial Dictionary:'—

NEW WORKS, 1829 to 1832.

Years.	Vols.	Value of a single Copy at Publication price.
1829	1413	£879 1*s.* 0*d.*
1830	1592	873 5 3
1831	1619	939 9 3
1832	1525	807 19 6

NEW WORKS, 1839 to 1842.

1839	2302	£966 11*s.* 2*d.*
1840	2091	943 3 5
1841	2011	902 5 9
1842	2193	968 2 6

In the four years ending 1832 were published, of new books, 6149 volumes; in the four years ending 1842 were published 8597 volumes. The cost of a single copy of the 6149 volumes was 3499*l.*; of the 8597 volumes, 3780*l.* The average price per volume in the first period was 11*s.* 5*d.*; in the second period, 8*s.* 9½d.

Mr. M'Culloch has also given the following table of reprints, from 1839 to 1842:—

REPRINTS AND NEW EDITIONS.

No. of Vols.	Value at Publication price.
773 . . .	£296 7*s.* 8*d.*
821 . . .	327 16 10
741 . . .	314 12 7
684 . . .	295 9 6

Mr. M'Culloch adds: "From inquiries we have made with much care and labour, we find that, at an average of the four years ending with 1842, 2149 volumes of new works, and 755 volumes of new editions and reprints (exclusive of pamphlets and periodical publications), were annually published in Great Britain; and we have further ascertained that the publication price of the former was 8*s.* 9½*d.*, and of the latter 8*s.* 2*d.* a volume. Hence, if we suppose the average impression of each work to have been 750 copies, it will be seen that the total value of the new works annually produced, if they were sold at their publication price, would be 708,498*l.* 8*s.* 9*d.*, and that of the new editions and reprints, 231,218*l.* 15*s.* We believe, however, that if we estimate the price at which the entire impressions of both descriptions of works actually sells at 4*s.* a volume, we shall not be far from the mark; and if so, the real value of the books annually produced will be 435,600*l.* a year."

But the most remarkable characteristic of the press of this country is its *periodical* literature. It might be asserted, without exaggeration, that the periodical works issued in Great Britain during one year comprise more sheets than all the books printed in Europe from the period of Gutenberg to the year 1500.

The number of *weekly periodical works* (not newspapers) issued in London on Saturday, May 4, 1844, was about sixty. Of these the weekly sale of the more important amounts to little less than 300,000 copies, or about fifteen millions annually. The greater number of these are devoted to the supply of persons who have only a very small sum to expend weekly upon their home reading.

Of the weekly publications, independent of the sale of many of them in monthly parts, we may fairly estimate that the annual returns are little short of 100,000*l.*

The *monthly* issue of periodical literature from London is unequalled by any similar commercial operation in Europe. 227 monthly periodical works were sent out on the last day of May, 1844, to every corner of the United Kingdom, from Paternoster Row. There are also 38 periodical works published quarterly: making a total of 265.

A bookseller, who has been many years conversant with the industry of the great literary hive of London on Magazine-day, has favoured us with the following computations, which we have every reason to believe perfectly accurate:—

The periodical works sold on the last day of the month amount to 500,000 copies.

The amount of cash expended in the purchase of these 500,000 copies is 25,000*l.*

The parcels dispatched into the country, of which very few remain over the day, are 2000.

The annual returns of periodical works, according to our estimate, amount to 300,000*l.* Mr. M'Culloch estimates them at 264,000*l.*

The number of newspapers published in the United Kingdom, in the year 1843, the returns of which can be obtained with the greatest accuracy through the Stamp Office, was 447. The stamps consumed by them in that year were 60,592,001. Their proportions are as follows:—

1843.

79	London newspapers .	31,692,092
212	English provincial .	17,058,056
8	Welsh	339,500
69	Scotch	5,027,589
79	Irish	6,474,764
447		60,592,001

The average price of these papers is, as near as may be, fivepence; so that the sum annually expended in newspapers is about 1,250,000*l.* The quantity of paper required for the annual supply of these newspapers is 121,184 reams, some of which paper is of an enormous size. In a petition to the pope in 1471, from Sweynheim and Pannartz, printers at Rome, they bitterly complain of the want of demand for their books, their stock amounting to 12,000 volumes; and they say, "You will admire how and where we could procure a sufficient quantity of paper, or even rags, for such a number of volumes." About 1200 reams of paper would have produced all the poor printers' stock. Such are the changes of four centuries.

We recapitulate these estimated annual returns of the commerce of the press:—

New books and reprints . .	£435,600
Weekly publications, not newspapers	100,000
Monthly publications . .	300,000
Newspapers	1,250,000
	£2,085,600

The literary returns of the United Kingdom, in 1743, were unquestionably little more than 100,000*l.* per annum. What has multiplied them twenty-fold? Is it the contraction or the widening of the market—the exclusion or the diffusion of knowledge? The whole course of our literature has been that of a gradual and certain spread from the few to the many—from a luxury to a necessary—as much so as the spread of the cotton or the silk trade. Henry VIII. paid 12*s.* a yard for a silk gown for Anne Boleyn—a sum equal to five guineas a yard of our day. Upon whom do the silk-mercers now rely—upon the few Anne Boleyns, or the thousands who can buy a silk gown at half-a-crown a yard? The printing-machine has done for the commerce of literature what the mule and the Jacquard-loom have done for the commerce of silk. It has made literature accessible to all.

BOOTY. [ADMIRALTY COURTS, p. 29.]

BORDA'RII, one of the classes of agricultural occupiers of land mentioned in the Domesday Survey, and, with the exception of the villani, the largest. The origin of their name, and the exact nature of their tenure, are doubtful. Coke (*Inst.* lib. i. § i. fol. 5 b, edit. 1628) calls them "boors holding a little house with some land of husbandry, bigger than a cottage." Nichols, in his 'Introduction to the History of Leicestershire,' p. xlv., considers them as cottagers, and that they took their name from living on the borders of a village or manor; but this is sufficiently refuted by Domesday itself, where we find them not only mentioned generally among the agricultural occupiers of land, but in one instance as "circa aulam manentes," dwelling near the manor-house; and even residing in some of the larger towns. In two quarters of the town of Huntingdon, at the time of forming the Survey, as well as in King Edward the Confessor's time, there were 116 burgesses, and subordinate to them 100 bordarii, who aided them in the payment of the geld or tax. (*Domesd. Book.* tom. i. fol. 203.) In Norwich there were 420 bordarii: and 20 are mentioned as living in Thetford. (*Ibid.* tom. ii. fol. 116 b, 173.)

Bishop Kennett states that, "The bordarii often mentioned in the Domesday Inquisition were distinct from the servi

and villani, and seem to be those of a less servile condition, who had a board or cottage with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs and other small provisions for his board and entertainment." (*Gloss. Paroch. Antiq.*) Such also is the interpretation given by Bloomfield in his 'History of Norfolk.' Brady affirms "they were drudges, and performed vile services, which were reserved by the lord upon a poor little house and a small parcel of land, and might perhaps be domestic works, such as grinding, threshing, drawing water, cutting wood, &c." (*Pref.* p. 56.)

Bord, as Bishop Kennett has already noticed, was a cottage. Bordarii, it should seem, were cottagers merely. In one of the Ely Registers we find Bordarii, where the breviate of the same entry in Domesday itself reads *cotarii*. Their condition was probably different on different manors. In some entries in the Domesday Survey, the expression "bordarii arantes" occurs. At Evesham, on the abbey demesne, 27 bordarii are described as "servientes-curiæ."(*Domesd.* tom. i. fol. 175 b.)

On the demesne appertaining to the castle of Ewias there were 12 bordarii, who are described as performing personal labour on one day in every week. (*Ibid.* fol. 186.) At St. Edmondsbury in Suffolk, the abbot had 118 homagers, and under them 52 bordarii. The total number of bordarii noticed in the different counties of England in Domesday Book is 82,634. (Ellis's *General Introd. to Domesday Book*, edit. 1833, vol. i. p. 82; ii. p. 511; Haywood's *Dissert. upon the Ranks of the People under the Anglo-Saxon Governments*, pp. 303, 305.)

BOROUGH-ENGLISH is a peculiar custom by which lands and tenements held in ancient burgage descend to the youngest son instead of to the eldest, wherever such custom obtains. It still exists in many cities and ancient boroughs, and in the adjoining districts. The land is held in socage, but descends to the youngest son in exclusion of all the other children. In some places this peculiar rule of descent is confined to the case of children; in others the custom extends to brothers and other male collateral relations. The same custom also governs the descent of copyhold land in various manors.

The custom is alluded to by Glanville and by Littleton, of whom the latter thus explains it:—"Also for the greater part such boroughes have divers customes and usages, which be not had in other towns. For some boroughes have such a custome, that if a man have issue many sonnes and dyeth, the youngest son shall inherit all the tenements which were his father's within the same borough, as heire unto his father by force of the custome; the which is called Borough-English" (s. 165).

The origin of this custom is referred to the time of the Anglo-Saxons; and it does not appear to have been known by its present name until some time after the Conquest; for the Normans, having no experience of any such custom in their own country, distinguished it as "the custom of the Saxon towns." In the reign of Edward III. the term borough-English was used in contrast with the Norman law: thus it was said that in Nottingham there were two tenures—"burgh-Engloyes" and "burgh-Fraunçoyes," the usages of which tenures are such that all the tenements whereof the ancestor dies seised in "burgh-Engloyes" ought to descend to the youngest son, and all the tenements in "burgh-Fraunçoyes" to the eldest son, as at common law. (1 Edward III. 12 *a.*)

Primogeniture was the rule of descent in England at common law; but in the case of socage lands all the sons inherited equally until long after the Conquest, wherever it appeared that such lands had, by custom, been anciently divisible. But this general rule of descent was often governed by peculiar customs, and in some places the eldest son succeeded his father by special custom, while in others (viz. those subject to borough-English) the youngest son alone inherited. (Glanville, lib. vii. c. 3, and notes by Beames.)

"This custome" (of borough-English), says Littleton, "also stands with some certaine reason, because that the younger son (if he lacke father and mother), be-

cause of his younger age, may least of all his brethren helpe himself" (§ 211). When the state of society in the ancient English boroughs is considered, the reason assigned by Littleton will appear sufficient. The inhabitants supported themselves by trade; their property consisted chiefly of moveables; and their real estate was ordinarily confined to the houses in which they carried on their business, with, perhaps, a little land attached. Such persons were rarely able to offer an independence to their children, but were satisfied to leave each son, as he grew up, to provide for himself by his own industry. To endow a son with a portion of his goods, and send him forth to seek his own fortunes, was all that a burgess thought necessary; and so constant was this practice, that the law considered the son of a burgess to be of age "so soon as he knew how to count money truly, to measure cloths, and to carry on other business of his father's of the like nature" (Glanv. lib. 7, s. 9; Bracton, lib. 2, s. 37). In this condition of life, the youngest son would have the least chance of being provided for at his father's death, and it was, therefore, a rational custom to make provision for him out of the real estate. But as it might happen that the youngest son had been provided for, like his brothers, before the father's death, by the custom of most boroughs the father had a power of devising his tenements by will. Such a power was unknown to the common law; for without the consent of his heir no man could leave any portion of his inheritance to a younger son, "because," says Glanville, "if this were permitted, it would frequently happen that the elder son would be disinherited, owing to the greater affection which parents often feel towards their younger children." And the freedom of testamentary devise, enjoyed under the custom of borough-English, to the prejudice of heirs, was not fully conceded by the laws of England until the latter part of the seventeenth century. (12 Car. II. c. 24.)

The origin of the custom of borough-English has, in later times (3 *Modern Reports*, Preface) been referred to another cause, instead of that assigned by Littleton. It has been said that by the custom of certain manors the lord had a right to lie with the bride of his tenant holding in villenage, on the first night of her marriage; and that, for this reason, the youngest son was preferred to the eldest, as being more certainly the true son of the tenant. But this supposition is, on many grounds, less satisfactory than the other. Admitting the alleged right of the lord, it would have been a reason, perhaps, for passing over the eldest son, but why should the second and other sons have been also superseded in favour of their youngest brother? The legitimacy of the eldest son alone could have been doubted, and upon this hypothesis, either the second son would have been his father's heir, or all the sons except the eldest would have shared the inheritance. But the existence of this barbarous usage in England is altogether denied by many (1 Stephen, *Comm.* 199; 3 *Rep. Real Prop. Commrs.* p. 8); and even if the customary fine payable to the lord in certain manors (especially in the north of England) on the marriage of the son or daughter of his villein, be admitted to have been a composition of the lord's right of concubinage (see Du Cange, tit. "Marcheta;" *Co. Lit.* 117 b, 140 a; Bract. lib. 2, § 26), it does not appear that such fines are more prevalent in those places where the custom of borough-English obtains, than in other parts of the country where there are different rules of descent. (Robinson *On Gavelkind*, p. 387.)

But whatever may have been the origin of the custom, it is no longer to be supported by any arguments in its favour. If land is to be inherited by one son alone, the eldest is undoubtedly the fittest heir: he grows up the first, and in case of his father's death succeeds at once to his estate, fulfils the duties of a landowner, and stands in *loco parentis* to his father's younger children, while the succession of the youngest son would always be liable to a long minority, during which the rest of the family would derive little benefit from the estate. It is also an unquestionable objection to the custom that each son in succession may conceive himself to be the heir, until he is deprived

of his inheritance by the birth of another brother.

In addition to these general objections to the custom, there are legal difficulties connected with its peculiarity of descent. In making out titles, for instance, it is much more difficult to prove that there was no younger son than that there was no elder son; and obscure questions must arise concerning the boundaries of the land subject to the custom, and respecting the limits of the custom itself in each particular place where it prevails. For these reasons the Commissioners of Real Property, in 1832, recommended the universal abolition of the custom (3rd *Rep.* p. 8), which, however, is still recognised by the law as an ancient rule of descent wherever it can be shown to prevail. (Glanville, lib. 7, c. 3; *Co. Litt.* § 165; 1st *Inst.* 110 b; Robinson *On Gavelkind, Appendix*; 7 Bacon's *Abridgment*, 560, tit. "Descent;" Cowell's *Law Dict.* tit. "Borow-English;" Du Cange, *Glossarium*, tit. "Marcheta;" *Regiam Magistatem*, lib. 4, cap. 31; 2 Black. *Comm.* 83; 1 Stephen, *Comm.* 198; 3 Cruise, *Digest*, 388; 3 & 4 Will. IV. c. 106; 3rd *Report of Real Property Commissioners.*)

BOROUGH, MUNICIPAL. [MUNICIPAL CORPORATIONS.]

BOROUGH, PARLIAMENTARY. [PARLIAMENT.]

BOTTOMRY, BOTTOMREE, or BUMMAREE, is a term derived into the English maritime law from the Dutch or Low German. In Dutch the term is Bomerie or Bodemery, and in German Bodmerei. It is said to be originally derived from Boden or Bodem, which in Low German and Dutch formerly signified the bottom or keel of a ship; and according to a common process in language, the part being applied to the whole, also denoted the ship itself. The same word, differently written, has been used in a similar manner in the English language; the expression *bottom* having been commonly used to signify a ship, previously to the seventeenth century, and being at the present day well known in that sense as a mercantile phrase. Thus it is a familiar mode of expression among merchants to speak of "shipping goods in foreign *bottoms*."

The contract of bottomry in maritime law is a pledge of the ship as a security for the repayment of money advanced to an owner for the purpose of enabling him to carry on the voyage. It is understood in this contract, which is usually expressed in the form of a bond, called a Bottomry Bond, that if the ship be lost on the voyage, the lender loses the whole of his money; but if the ship and tackle reach the destined port, they become immediately liable, as well as the person of the borrower, for the money lent, and also the premium or interest stipulated to be paid upon the loan. No objection can be made on the ground of usury, though the stipulated premium exceeds the legal rate of interest, because the lender is liable to the casualties of the voyage, and is not to receive his money again at all events. In France the contract of bottomry is called *Contrat à la grosse*, and in Italy *Cambio maritimo*, and is subject to different regulations by the respective maritime laws of those countries. But money is generally raised in this way by the master of the ship when he is abroad and requires money to repair the vessel or to procure other things that are necessary to enable him to complete his voyage. If several bottomry bonds are given by the master for the same ship at different times, that which is later in point of time must be satisfied first, according to a rule derived from the Roman law (*Dig.* 20, tit. 4, s. 5, 6): the reason of this rule is, that a subsequent lender by his loan preserves the security of a prior lender. It is a rule of English law that there must be a real necessity to justify the master in borrowing on the security of his ship.

In taking up money upon Bottomry, the loan is made upon the security of the ship alone; but when the advance is made upon the lading, then the borrower is said to take up money at *respondentia*. In this distinction as to the subject matter of the security consists the only difference between Bottomry and Respondentia; the rules of English maritime law being equally applicable to both.

The practice of lending money on ships or their cargo, and sometimes on the freight was common in Athens, and in

other Greek commercial towns. Money thus lent was sometimes called (ναυτικὰ χρήματα) ship-money. Demosthenes (I. *Against Aphobus*), in making a statement of the property left him by his father, enumerates seventy minæ lent on bottomry. If the ship and cargo were lost, the lender could not recover his principal or interest; which stipulation was often expressly made in the (συγγραφή) bond. (Demosthenes *against Phormion, and against Dionysodorus*, c. 6, 10.) The nature of the bottomry contract is shown in the Oration of Demosthenes against Dionysodorus:—3000 drachmæ were lent on a ship, on condition of her sailing to Egypt and returning to Athens; the money was lent on the double voyage, and the borrower contracted in writing to return direct to Athens, and not dispose of his cargo of Egyptian grain at any other place. He violated his contract by selling his cargo at Rhodes, having been advised by his partner at Athens that the price of grain had fallen in that city since the departure of the vessel. The plaintiff sought to recover principal and interest, of which the borrower attempted to defraud him: damages also were claimed, conformably to the terms of the bond. As neither principal nor interest could be demanded if the vessel were lost, it was a common plea on the part of the borrower that the ship was wrecked. The rate of interest for money thus lent was of course higher than the usual rate. The speech of Demosthenes Against Lacritus contains a complete Bottomry contract, which clearly shows the nature of these loans at Athens.

Money was also lent, under the name of *pecunia trajectitia*, on ships and their cargo among the Romans, and regulated by various legal provisions. But it appears that the money was merely lent on condition of being repaid if the ship made her voyage safe within a certain time, and that the creditor had no claim on the ship unless it was specifically pledged. The rate of interest was not limited by law, as in the case of other loans, for the lender ran the risk of losing all if the ship was wrecked; but this extraordinary rate of interest was only due while the vessel was actually at sea. The interest of money lent on sea-adventures was called Usuræ Maritimæ. (*Dig.* 22, tit. 2, "De Nautico Fœnere;" Molloy, *De Jure Maritimo*, lib. ii. c. 11; Parke *On Insurance*, chap. xxi.; Benecke's *System des Assecuranz und Bodmereiwesens*, bd. 4.)

It has been already stated that Bottomry, in its general sense, is the pledge of a ship as a security for money borrowed for the purpose of a voyage. It has been conjectured that the power of a master to pledge a ship in a foreign country led to the practice of an owner borrowing money at home upon the like security. But Abbott, in his treatise on Shipping, expresses a doubt on this matter, and adds that the Roman law says nothing of contracts of bottomry made by the master of a ship in that character, according to the practice which has since universally prevailed. Yet there are passages in the 'Digest' (20, tit. 4, s. 5, 6) which seem to imply that a master might make such a contract, for, as already observed, the ground for giving the preference to a subsequent over a prior lender is stated to be that the subsequent loan saves the prior lender's security; and we must accordingly suppose that money could be borrowed by the master when he found it necessary for the preservation of the ship or cargo.

The terms bottomry and respondentia are also applied to contracts for the repayment of money lent merely on the hazard of a voyage—for instance, a sum of money lent to a merchant to be employed in trade, and to be repaid with extraordinary interest if the voyage is safely performed. This is in fact the Usuræ Maritimæ of the Romans. But the stat. 7 Geo. I. c. 21, § 2, made null and void all contracts by any of his Majesty's subjects, or any person in trust for them, for or upon the loan of money by way of bottomry on any ships in the service of foreigners, and bound or designed to trade in the East Indies or places beyond the Cape of Good Hope. Another statute, 19 Geo. II. c. 37, enacted that all moneys lent on bottomry or respondentia on vessels bound to or from the East Indies shall be expressly lent only on the ship or on the merchandise; that the lender shall have

the benefit of salvage; and that if the borrower has not an interest in the ship, or in the effects on board, to the value of the sum borrowed, he shall be responsible to the lender for so much of the principal as has not been laid out, with legal interest and all other charges, though the ship and merchandise be totally lost. With the exception of the cases provided for by these two statutes, money may still be lent on the hazard of a voyage. Bottomry is sometimes treated as a part of the law of insurance, whereas it is quite a different thing. For further information, see Abbott, *On Shipping;* Parke, *System of the Law of Marine Insurance.*

It is observed in the 'Staats-Lexicon' of Rotteck and Welcker, art. "Bodmerei," that Bodmerei "is a loan for a sea-voyage, in which the ship becomes pledged. In this simplest form, at least, it is possible that this kind of transaction may have originated among the German nations. And so it is still viewed in the English law, even where the ship is not expressly pledged." This, however, is a misstatement of the English law. The same article, after some general remarks on Bottomry, which it is to be presumed apply to the German states, adds—"that, in fact, Bottomry now generally occurs only in cases when the master of a ship, during the voyage, requires money, and obtains a loan for the purpose of prosecuting it, for which he has no better security to offer than the ship itself. This transaction also differs from the usual contract of pledge in this: that the owner himself does not pledge the ship; but the captain is considered as the agent of the owner, and as doing what is necessary for his interest under the circumstances."

BOUNTY, a sum of money paid by government to the persons engaged in certain branches of commerce, manufactures, or other branch of industry.

The question of bounties and their impolicy is discussed by Adam Smith in his 'Wealth of Nations,' book iv. chap. 5; and the subject has also been treated in a very complete manner by the late Mr. Ricardo in his 'Principles of Political Economy and Taxation.' When Postlethwaite published his 'Dictionary of Commerce,' in 1774, bounties were "very numerous." After the publication of Adam Smith's work bounties began to be regarded with less favour, and have at length sunk into complete discredit. They are now no longer relied upon as a means of furthering the true interests of commerce. The policy of bounties was very materially connected with the opinions of a former day respecting the balance of trade. [BALANCE OF TRADE.] It was thought that they operated in turning the balance in our favour. Adam Smith remarks: — "By means of bounties our merchants and manufacturers, it is pretended, will be enabled to sell their goods as cheap or cheaper than their rivals in the foreign markets. . . . . We cannot (he adds) force foreigners to buy their goods, as we have done our own countrymen. The next best expedient, it has been thought, therefore, is to *pay* them for *buying.*" Bounties in truth effect nothing more than this. The propositions maintained by Adam Smith are, that every trade is in a natural state when goods are sold for a price which replaces the whole capital employed in preparing and sending them to the market with something in addition in the shape of profit. Such a trade needs no bounties. Individual interest is sufficient to prompt men to engage in carrying it on. On the other hand, when goods are sold at a price which does not replace the cost of the raw material, the wages of labour and all the incidental expenses which have been incurred in bringing them into a state fit for the market, together with the manufacturer's profits; that is, when they are sold at a loss, the manufacturer will cease to produce an unprofitable article, and this particular branch of industry will soon become extinct. It perhaps happens that the general interests of the country are thought to be peculiarly connected with the species of industry in question, and that it therefore behoves government to take means for preventing its falling into decay. At this point commences the operation of bounties, which are devised for the purpose of producing an equilibrium between the cost of production, the market-price, and a remunerating price, the last of which alone promotes the con-

stant activity of every species of industry. Smith observes, "The bounty is given in order to make up this loss, and to encourage a man to continue or perhaps to begin a trade of which the expense is supposed to be greater than the returns; of which every operation eats up a part of the capital employed in it, and which is of such a nature, that if all other trades resembled it, there would soon be no capital left in the country." And he adds:—"The trades, it is to be observed, which are carried on by means of bounties are the only ones which can be carried on between two nations for any considerable time together, in such a manner as that one of them shall always and regularly lose, or sell its goods for less than they really cost. . . . . The effect of bounties, therefore, can only be to force the trade of a country into a channel much less advantageous than that in which it would naturally run of its own accord."

One of the most striking instances of the failure of the bounty system occurred about the middle of the last century in connexion with the white herring fishery. Tempted by liberal bounties persons rashly ventured into the business without a knowledge of the mode of carrying it on in the most economical and judicious manner, and in no very long space of time a joint-stock of 500,000*l.* was nearly all lost.

The bounty on the exportation of corn was given up in 1815 [CORN TRADE], and that on the exportation of herrings, linen, and several other articles ceased in 1830. In 1824 the sums paid as bounties for promoting fisheries, linen manufactures, &c. in the United Kingdom was 536,228*l.*; 273,269*l.* in 1828; 170,999*l.* in 1831; and in 1832 and 1833 the sums of 76,572*l.* and 14,713*l.* respectively.

Bounties are not now allowed on any article of export; but in some cases it is believed that DRAWBACKS constitute in reality a bounty, being greater than the duty which has been paid on the article. The drawback on refined sugar, for instance, has been fixed at a certain amount proportioned to the quantity of raw sugar supposed to have been used, which is calculated at 34 cwts. of raw to 20 cwts. of refined; but by improvements in the mode of refining, a less quantity of raw sugar may be required in manufacturing 20 cwts. of refined sugar; and the drawback on the difference is in reality a bounty.

BOUNTY, QUEEN ANNE'S. [BENEFICE, pp. 343, 345.]

BREAD. [ADULTERATION; ASSIZE.]

BREVET, in France, denotes any warrant granted by the sovereign to an individual in order to entitle him to perform the duty to which it refers. In the British service, the term is applied to a commission conferring on an officer a degree of rank immediately above that which he holds in his particular regiment; without, however, conveying a power to receive the corresponding pay. Brevet rank does not exist in the royal navy, and in the army it neither descends lower than that of captain, nor ascends above that of lieutenant-colonel. It is given as the reward of some particular service which may not be of so important a nature as to deserve an immediate appointment to the full rank: it however qualifies the officer to succeed to that rank on a vacancy occurring, in preference to one not holding such brevet, and whose regimental rank is the same as his own.

In the fifteenth section of the Articles of War it is stated that an officer having a brevet commission, while serving on courts-martial formed of officers drawn from differrent regiments, or when in garrison, or when joined to a detachment composed of different corps, takes precedence according to the rank given him in his brevet, or according to the date of any former commission; but while serving on courts-martial or with a detachment composed only of his own regiment, he does duty and takes rank according to the date of his commission in that regiment. Brevet rank, therefore, is to be considered effectual for every military purpose in the army generally, but of no avail in the regiment to which the officer holding it belongs, unless it be wholly or in part united for a temporary purpose with some other corps. (Samuel's *Hist. Account of the British Army*, p. 615.)

Something similar to the brevet rank above described must have existed in the French service under the old monarchy,

for, according to Père Daniel (tom. ii. p. 217, 227), the colonel-general of the Swiss troops had the power of nominating subaltern officers to the rank of captains by a certificate, which enabled them to hold that rank without the regular commission. The same author states also that if any captain transferred himself from one regiment to another, whatever might be the date of his commission, he was placed at the bottom of the list in the regiment which he entered, without, however, losing his right of seniority when employed in a detachment composed of troops drawn from several different regiments.

The introduction of brevet rank into the British army, as well as that of the half-pay allowance to officers on retiring from regimental duty, probably took place soon after the Revolution in 1688. But the practice of granting, when officers from different regiments are united for particular purposes, a nominal rank higher than that which is actually held, appears to have been of older date; for in the *Soldier's Grammar*, which was written in the time of James I., it is stated that the lieutenants of colonels are captains by courtesy, and may sit in a court of war (court-martial) as junior captains of the regiments in which they command. (Grose, *Military Antiquities*, vol. ii.) It was originally supposed that both officers holding commissions by brevet and those on half-pay were subject to military law; but, in 1748, when the inclusion of half-pay officers within the sphere of its control was objected to as an unnecessary extension of that law, the clause referring to them in the Mutiny Act was omitted, and it has never since been inserted. In 1786 it was decided in parliament that brevet officers were subject to the Mutiny Act or Articles of War, but that half-pay officers were not. (Lord Woodhouselee, *Essay on Military Law*, p. 112.) Brevet command was frequently conferred on officers during the late war; but the cause no longer existing, the practice has declined, and at present there are very few officers in the service who hold that species of rank.

BREWER. [ALEHOUSES, p. 99; ADULTERATION, p. 36.

BRIBERY, in English law, has a threefold signification: denoting, first, the offence of a judge, magistrate, or any person concerned judicially in the administration of justice, receiving a reward or consideration from parties interested, for the purpose of procuring a partial and favourable decision; secondly, the receipt or payment of money to a public ministerial officer as an inducement to him to act contrary to his duty; and thirdly, the giving or receiving of money to procure votes at parliamentary elections, or elections to public offices of trust.

I. In England judicial bribery has from early times been considered a very heinous offence. By an ancient statute, 2 Hen. IV. "All judges, officers, and ministers of the king convicted of bribery shall forfeit treble the bribe, be punished at the king's will, and be discharged from the king's service for ever." The person offering the bride is guilty of a misdemeanour. Sir Edward Coke says that "if the party offereth a bribe to the judge, meaning to corrupt him in the cause depending before him, and the judge taketh it not, yet this is an offence punishable by law in the party that doth offer it." (3 *Inst.* 147.) In the 24 Edw. III. (1351) Sir William Thorpe, then chief justice of England, was found guilty, upon his own confession, of having received bribes from several great men to stay a writ which ought in due course of law to have issued against them. For this offence he was condemned to be hanged, and all his lands and goods forfeited to the crown. Blackstone says (*Comment.* vol. iv. p. 140) that he was actually executed; but this is a mistake, as the record of the proceeding shows that he was almost immediately pardoned and restored to all his lands (3 *Inst.* 146). It appears also from the Year Book (28 *Ass.* pl. 2) that he was a few years afterwards reinstated in his office of chief justice. The case, therefore, does not speak so strongly in favour of the purity of the administration of justice in early times as many writers, following Blackstone, have supposed. In truth, the corruption of the judges for centuries after Sir Wm. Thorpe's case occurred was notorious and unquestionable. It is noticed by Edward

VI. in a discourse of his published by Burnet, as a complaint then commonly made against the lawyers of his time. (Burnet's *Hist. of the Reformation*, vol. ii. App. p. 72.) Its prevalence at a still later period, in the reign of James I., may be inferred from the caution contained in Lord Chancellor Bacon's address to Serjeant Hutton upon his becoming a judge, "that his hands and the hands of those about him should be clean and uncorrupt from gifts and from serving of turns, be they great or small ones." (Bacon's *Works*, vol. ii. p. 632, edit. 1765.) In Lord Bacon's own confession of the charges of bribery made against him in the House of Lords, he alludes, by way of palliation, to the offence of judicial corruption as being *vitium temporis*. (Howell's *State Trials*, vol. ii. p. 1104.) Since the Revolution, in 1688, judicial bribery has been altogether unknown in England, and no case is reported in any lawbook since that date in which this offence has been imputed to a judge in courts of superior or inferior jurisdiction.

II. Bribery in a public ministerial officer is a misdemeanour at common law in the person who takes and also in him who offers the bribe. A clerk to the agent for French prisoners of war at Porchester Castle, who had taken money for procuring the exchange of certain prisoners out of their turn, was indicted for bribery and severely punished by the Court of King's Bench. (1 East's *Reports*, 183.) A person offered the first lord of the treasury a sum of money for a public appointment in the colonies, and the Court of King's Bench, in Lord Mansfield's time, granted a criminal information against him. (4 Burrows's *Rep.* 2500.)

Bribery with reference to particular classes of public officers has become punishable by several acts of parliament. Thus by the stat. 6 Geo. IV. c. 106, § 29, if any person shall give, or offer, or promise any bribe to any officer or other person employed in the customs, to induce him in any way to neglect his duty (whether the offer be accepted or not), he incurs a penalty of 500*l.* So also by 6 Geo. IV. c. 108, § 35, if any officer of the *customs*, or any officer of the army, navy, marines, or other person employed by or under the direction of the commissioners of the customs, shall make any collusive seizure, or deliver up, or agree to deliver up, or not to seize any vessel, or goods liable to forfeiture, or shall take any bribe for the neglect or non-performance of his duty, every such offender incurs a penalty of 500*l.*, and is rendered incapable of serving his Majesty in any office whatever, either civil or military; and the person also giving or offering the bribe, or making such collusive agreement with the officer, incurs the like penalty. By the 6 Geo. IV. c. 80, § 145, similar penalties are inflicted upon officers of the *excise* who take bribes, as well as upon those who give or offer the bribe.

III. As to bribery for votes at elections to public offices.

1. Bribery at parliamentary elections is said to have been always an offence at common law, and it is punishable by indictment or information. There are however no traces of any prosecutions for bribery of this kind, until particular penalties were imposed upon the offence by acts of parliament. The act 7 & 8 Will. III. c. 4, called the Treating Act, declares that no candidate shall, after the teste (date) of the writs, or after the ordering of the writs, or after any vacancy, give any money or entertainment to his electors, or promise to give any in order to his being elected, under pain of being incapable to serve for that place in parliament. The 2 Geo. II. c. 24, which is explained and enlarged by 9 Geo. II. c. 28, and 16 Geo. III. c. 11, imposed penalties both on the giver and receiver of a bribe. But the operative statute upon this subject at the present time is 49 Geo. III. c. 118, which provides that if any person shall give or cause to be given, directly or indirectly, or shall promise or agree to give any sum of money, gift, or reward, to any person upon any engagement that such person to whom such gift or promise shall be made, shall by himself, or by any other person at his solicitation, procure or endeavour to procure the return of any person to serve in parliament for any place, every such person so giving or promising (if not returned) shall for every such gift or pro-

mise forfeit the sum of 1000*l.*; and every such person returned, and so having given or promised to give, and knowing of and consenting to such gifts or promises upon any such engagement, shall be disabled and incapacitated to serve in that parliament for such place; and any person or persons who shall receive or accept of any such sum of money, gift, or reward, or any such promise upon any such engagement, shall forfeit the amount of such sum of money, gift, or reward, over and above the sum of 500*l.*; which sum of 500*l.* may be recovered by any party sueing for the same in the inferior Courts of Record in Great Britain or Ireland. This act provides for every legal expense bonâ fide incurred at or concerning an election. It also imposes penalties on persons giving, procuring, or promising to give or procure any office, place, or employment, to any person upon an express contract to procure a seat in the House of Commons; the penalty on the person returned is loss of his seat, and on the receiver of the office forfeiture of it, incapacity, and the payment of 500*l.*; but if the person who so gives, procures, or promises any place is an officer of the crown, a penalty of 1000*l.* is imposed on him. Actions on the case under this statute must be brought in two years.

The act of 5 & 6 Vict. c. 102, is an act for the better discovery of bribery and treating at the elections of members of parliament, and is commonly known as Lord John Russell's Act. The 20th and 22nd sections of this act are as follow:—§ 20. And whereas a practice has prevailed in certain boroughs and places, of making payments to or "on behalf of candidates to the voters in such manner that doubts have been entertained whether such payments are to be deemed bribery," be it declared, that the payment or gift of any sum of money, or other valuable consideration whatsoever, to any voter before, during, or after any election, or to any person on his behalf, or to any person related to him by kindred or affinity, and which shall be so paid or given on account of such voter having voted or refrained from voting, or being about to vote or refrain from voting, at the said election, whether the same shall have been paid or given under the name of *head money* or any other name whatsoever, and whether such payment shall have been in compliance with any usage or not, shall be deemed bribery. § 22. The act 7 & 8 Will. III. c. 4, having been found insufficient to prevent treating: be it enacted &c. that any candidate or person elected, who shall by himself, or by or with any person, or in any manner, directly or indirectly, give or provide, or cause or knowingly allow to be given or provided, wholly or partly at his expense, or pay wholly or in part any expenses incurred for any meat, drink, entertainment, or provision to or for any person at any time, either before, during, or after such election, for the purpose of corruptly influencing such person, or any other person, to give or to refrain from giving his vote in any such election, or for the purpose of corruptly rewarding such person, or any other person, for having given or refrained from giving his vote at any such election, shall be incapable of being elected or sitting for the particular county, &c. during the Parliament for which such election shall be holden.

Cases of bribery in the election of members of Parliament are most commonly brought to notice by the special reports made by Election Committees. [ELECTIONS.]

2. Bribery at municipal elections was also an offence at common law, and a criminal information was granted by the Court of King's Bench against a man for promising money to a member of the corporation of Tiverton to induce him to vote for a particular person at the election of a mayor. (*Plympton's Case*, 2 Lord Raymond's *Reports*, 1367.)

The 54th clause of the act for the regulation of Municipal Corporations in England and Wales (5 & 6 Will. IV. c. 76) provides "that if any person who shall have, or claim to have, any right to vote in any election of mayor, or of a councillor, auditor, or assessor of any borough, shall ask or take any money or other reward, or agree or contract for any money or other reward whatsoever, to give or forbear to give his vote in any such election, or if any person shall by any gift or reward, or by any promise,

agreement, or security for any gift or reward, corrupt or procure, or offer to corrupt or procure any person to give or forbear to give his vote in any such election, such person so offending in any of the cases aforesaid, shall for every such offence forfeit the sum of 50*l.*, and for ever be disabled to vote in any municipal or parliamentary election whatever in any part of the United Kingdom, and also shall for ever be disabled to hold any office or franchise to which he then shall or at any time afterwards may be entitled as a burgess of such borough, as if such person was naturally dead."

The Elections of Roman magistrates occurred annually, and this circumstance gave the Romans great opportunity of becoming expert in all the means of securing votes. The word Ambitio (from which our word Ambition comes) signified literally a going about. As applied to elections, it signified any improper mode of trying to gain votes. The Tribunes of the Plebs at an early period attempted to check the solicitation of votes, by proposing and carrying a law which forbade a man to add any white to his dress with a view to an election. (Livy, iv. 25.) This, observes Livy, which would now be viewed as a small matter, raised at that time a great contest between the Patres and the Plebs (the Patricians and Plebeians). "To add white to the dress" signified to whiten the dress by artificial means as it is said, or perhaps to put on a white dress. From this circumstance, persons who were seeking the magistracy were called Candidati, that is, persons dressed in a white (candida) dress; and this is the remote origin of our word Candidate. Another law (Lex Paetelia) against canvassing on the market-days, and going round to the country places where numbers of people were collected, was passed B.C. 359, which Livy (vii. 15) calls a law about Ambitus, the name by which canvassing and solicitation of votes was designated. The object of this law was to check the canvassing of Novi homines, men not of the class of nobles, who were aspiring to the honours of the State. After a long interval (B.C. 181) the Lex Cornelia Baebia enacted that those who were convicted of the offence called Ambitus should be incapable of being candidates for a magistracy for ten years. (Liv. xl. 19.) The Lex Acilia Calpurnia (B.C. 67) contained enactments against hiring people to attend the candidates, feasting the people, and giving them places according to their tribes at the shows of gladiators. The penalties were fines and exclusion from the Senate, and disability to be elected to magistracies. In the consulship of Cicero, B.C. 63, a Lex Tullia added to the former penalties for the offence of Ambitus, ten years' exile. This law also forbade a man to exhibit shows of gladiators within two years before he was a candidate for a magistracy. In B.C. 61, a Lex which was proposed by the tribune M. Aufidius Lurco enacted that if a man promised money to a tribe with a view to his election, he should be liable to no penalty, if he did not pay it; if he did pay it, he was liable to pay the tribe a certain sum (annually?) as long as he lived. (Cicero, *Ad Attic.* i. 16.)

The usual mode of trying to gain votes, to which the word ambitus applied, was by gifts of money. The candidate used to go round and call on the voters, shake them by the hand, and make them civil speeches. The voting by ballot in the Comitia was established B.C. 139, and, according to the Roman system, the vote of each of the centuries and of each of the thirty-four tribes was counted as one vote. Whether then the election was at the Comitia Centuriata or the Comitia Tributa, the object was to secure the votes of the centuries and of the tribes. Agents were employed to manage all this: interpretes, to make the bargain; sequestres, to hold the money till the election was over; and divisores, to pay it out. The Lex Licinia (B.C. 55) was entitled a law against Sodalitia; but critics have not been agreed as to what the term properly means. Wunder (*Prolegomena* to his edition of Cicero's oration for Cn. Plancius) says that the offence against which this Licinian law was directed, differed from Ambitus, which consisted in giving money or treating the people, or in any way buying their votes. The offence of Sodalitia consisted, as he says, in using force; certain persons, called sodales (associates, agents), were

bribed by the candidates to compel the rest to give their votes to the briber; and that this might be the more easily managed, the members of each tribe were marked out into divisions, and the whole body of voters was divided into parcels, so that each sodalis or agent had a certain portion of a tribe or of the whole body of voters assigned to him, and it was his business to get the votes of his portion of the voters in any way that he could for the candidate who hired him. "Accordingly," Wunder concludes, "in those elections (comitia) in which candidates employed sodales (agents), the multitude were not so much induced to give their votes by money as by force." This is a strange way of explaining an election: the agents were paid, and the voters got nothing. If the learned German had read the late Report on the Sudbury election, he would find it was just the other way there. The absurdity of supposing that the voters were compelled to vote, and that by one man in his particular division, is sufficiently striking. The learned commentator then proceeds to quote passages from Cicero's oration for his friend Cn. Plancius, who was tried under the Licinian law, to prove his point; but his quotations prove just as much as his assertions. It is evident that the law was directed against one of those arrangements which had been invented to facilitate bribery. Agents were appointed to look after particular sets of voters: the value of the division of labour was recognised in this method of securing votes. It is evident from an expression in Cicero's oration (c. 18), that the marking out of the voters into classes or bodies, the putting money in the hands of a person who had to pay it if the candidate was returned, the promising of the money, and the final payment, were all parts of one well-organised system of bribery. One may conclude that the voters in a tribe got nothing unless their briber was returned. They now voted by ballot, but this did not prevent bribery: it only rendered the payment contingent. The means of knowing who had voted right and who had not, we can only conjecture; but if the agents kept a good account of all the proceedings, they might not have much difficulty in ascertaining if their several squads had done their duty and kept their promise. It is quite consistent with all this that a man might be tried for the offence of bribery under the Licinian law only. There were, as it has been shown, various laws against bribery; and this was directed against that particular part of the system which was the most efficacious in corrupting the voters. It is stated that the penalties of the Licinian law were ten years' exile, the same as under the Lex Tullia. Pompeius Magnus, when he was sole consul, B.C. 52, proposed and carried a law for shortening proceedings in trials for Ambitus. When C. Julius Caesar was Dictator, he nominated one-half of the candidates for magistracies, except for the consulship, and signified his pleasure to the tribes by a circular. (Suetonius, *Caesar*, c. 41.) Under Augustus the forms of elections were still maintained: under his successor Tiberius the elections were transferred from the Popular assembly to the Senate. Finally, the Emperors nominated to all public offices, many of which, such as the consulship, were now merely honorary.

Besides the speech of Cicero for Cn. Plancius, there is another for L. Murena, who was tried under the laws against Ambitus. The Romans could never stop bribery by legislation. The penalties, so far as we know, were only directed against those who gave a bribe, unless the Licinian law, the provisions of which are imperfectly known, may have gone further, and included Sodales (agents). But we are not aware that there is any proof of this.

Bribery at elections for members of a legislative body, and of one invested with such power as the English House of Commons, is universally considered to be a political evil. It is considered a demoralizing practice with respect to those who sell their votes; and, if that be so, there seems no reason why it should not be demoralizing to those who buy them, though it is not always true that he who hires and he who is hired are equally demoralized by the baseness of the deed for which money is paid. The practice is also injurious to the constitution of the

House of Commons, if men are returned by the force of bribery, who would be replaced by better men if there was no bribery. In a rich country, where men are ambitious of political distinction, and the system of representation exists, bribery also will probably always exist. Public opinion, or positive morality, will perhaps never be strong enough to stop the practice entirely. If it cannot be entirely stopped, the question is how it can be reduced to the least possible amount. It is generally assumed that the State should in some way attempt to suppress bribery at elections; but it might be worth consideration whether the State should make any attempt to prevent it by penal measures. It is not certain that, where there are large constituencies, there would be more bribery at elections if there were no laws against it; nor is it certain that worse members would be returned by such constituencies than at present. One objection to bribery being permitted, or not declared to be a legal offence, might be that the State would, by such permission, allow the purchase of votes as a thing indifferent, instead of declaring it to be a thing that ought to be punished. And it may be urged that the electors, instead of looking to due qualifications in their representative, would only look to his ability to pay, and would give their vote solely to him who paid most for it; which is the case even now in some constituencies, as experience has proved. But if this is not the case at present to any great extent in the largest constituencies; if in such bodies there are many to whom a bribe is not offered, and many who from various reasons would not accept it, what reason is there for supposing that there would be more bribery in such constituencies if there were no laws against it? When the constituencies are large and collected on a comparatively small surface, and when the time of the election is limited to a few days, bribery cannot be very effectually carried on, though it is true that there is time enough before the election for the opposite parties to canvass actively, and to divide a large constituency into districts for the purpose of better securing the votes. Still the numbers of the electors, their proximity, and the shortness of the time, are obstacles to bribery. The proximity of the electors to one another might be supposed to favour bribery, because the trouble of dealing with a large number on a limited surface is less than the trouble of dealing with an equal number who are dispersed over a larger surface. This argument must be allowed to have its weight; but it is overweighed by another. In political discussions we must assume some principles as true. If the assumptions are not generally admitted, the conclusion will not convince those who deny the assumptions. If the assumptions are admitted to be true, it only concerns all parties to see that the conclusion is fairly drawn. It is here assumed that a majority of the electors in the largest constituencies, and a great majority of the educated class, admit that it is a mean, a dishonest act, to receive money for a vote; and they will also admit that a vote ought to be given to the man whom the voter thinks best qualified to be a representative. It is also assumed that opinion is more powerful in a dense than in a scattered population, and that the example and the opinion of a few men of character have more weight than the example and opinion of a much greater number of men who have no character or only a bad one. Now, when bribery is forbidden by law, it must be done secretly: when it is forbidden by opinion, it will for that reason also be done secretly; and there are many acts the public doing of which is more restrained by opinion than by law. There are some acts which the law can hardly reach, and yet men do not for that reason take the less pains to do them secretly. If the buying of votes were not a legal offence, it is true that the purchase might be made openly. But it is not probable that it would be so; for there is no reason why that bribery which is now known or believed to be done in secret, and is condemned not because it is illegal, but for other reasons, would receive less condemnation if it were done openly. Nor is it probable that many candidates who now give bribes through agents who take all possible means to conceal themselves and their employers, in order to avoid

legal penalties, would choose to let their agents do it openly, simply because the legal penalties were removed. It is concluded, then, that the attempt would be to do it secretly from various motives, and mainly from respect to opinion, which condemns the act. But as the only fear would be the fear of opinion, it is certain that, though done secretly, it would not be managed with all the caution that it now is, and that the fact of a candidate being a purchaser of votes, or the fact of money being paid for votes, would be known beyond all doubt. As the law now stands, it is a very difficult thing to bring the proof of bribery home to a candidate; so expert are the agents in all the means for baffling investigation. When bribery is said and believed to have been practised at an election, who will undertake to prove that the candidate was privy to it, though he may be able to prove that large sums were expended in bribery? But if it should be known beyond all doubt that a man purchased votes at an election, or if it should be known beyond all doubt that money was given for votes, and if the fact were so notorious that it could be published with safety, either a man would on that account not buy votes at all, or that opinion does not exist against bribery which we have assumed to exist. If it does exist, in order to prevent bribery we must operate on the giver of the bribe rather than the receiver; on the few who can be dealt with, rather than on the many. It is here assumed that if bribery should be notoriously practised at an election, every body would believe that the candidate on whose behalf money was given, was privy to it or consented to it. Whether the money was his own or another person's, makes no difference in his moral offence, if he consents to have his seat by such means; and he who openly published the fact of bribery and charged the candidate with it, would do good service, and should need no legal defence except to prove the fact.

Bribery is most practicable and is most practised when the constituencies are small. When they are large and scattered over a large surface, bribery is also easily practicable. It is also practicable and practised even when the constituencies are large and collected on a comparatively small surface; and it may cost no more to bribe a considerable portion of such constituencies than to bribe the whole or a majority of a small constituency. But the fewer persons there are to deal with, the less is the chance of detection; and therefore if the same sum will secure a seat in a small and in a large constituency, the small constituency appears to offer the better opportunity to the briber. Now as small constituencies may be and are bribed under the existing laws, so they might be bribed if there were no penalties against bribery. But for the reason already given the candidate would do it secretly, and yet the fact of bribery might become notorious, and the condemnation of opinion might fall upon him. At any rate there is no reason for supposing that there would be more bribery in small constituencies than there is at present, if the penalties against bribery were repealed.

The modes suggested for preventing bribery are by penal enactments or by secret voting, or by both. As to penal enactments, many things have been and may be suggested; but the history of legislation teaches us that the ingenuity of the law-maker is always left far behind by the ingenuity of the law-breaker. It is impossible to say that any provision of any kind would exclude all the means of evading a law which have been and may be devised. If penal enactments however could greatly diminish bribery or reduce it to a small amount, the object would be substantially accomplished. But experience also teaches that the success of laws in preventing things forbidden is not exactly in proportion to the severity of the enactments.

The arguments urged to show that secret voting would greatly reduce the amount of bribery are insufficient: in the case of small constituencies, the arguments fail; in the case of large constituencies, secret voting might render bribery somewhat more troublesome. But it is probable that no penal enactments will ever materially diminish the amount of bribery in small constituencies, and that it will always be practised in such places,

and perhaps, in large constituencies also when there is a violent contest, at least as much as if there were no laws against bribery. It remains then to consider what difference there is between the unpunishable traffic in votes and the present practice of selling them secretly in evasion of the law. If votes may be bought and sold like other things, no positive law is violated; but a traffic is carried on in a thing which the judgment of all reflecting persons condemns as demoralizing and as politically dangerous. If votes may not be bought and sold, but still are bought and sold, the law is secretly evaded, and the demoralization and political danger are at least as great as if there were no laws against bribery; unless the fact be that stricter penal laws will make bribery less than it would be without them. Those who think so should aim at improving this part of our penal code, but they should not forget to direct their legislation chiefly against the briber.

The sum is, that the best check on the traffic in votes is to make the constituencies large, and as far as possible to concentrate them; and further to assimilate them to one another as much as possible, and so that every electoral district shall contain a large number of persons whose condition and station in society render them not accessible to the ordinary means of bribery which a candidate can command. Small constituencies, whatever might be the qualification of the constituents, would be accessible to bribery. For it is a political principle which should not be overlooked, that all men may be bribed, but that different amounts and even different modes of bribery must be applied to different persons; and also that a man might accept a bribe for his vote, and at the same time sincerely condemn bribery. It is generally assumed that the poor are most ready to sell their votes—a fact which is not proved by experience; unless the word poor shall mean a man who is in want of money. But a man may be poor as compared with another, and yet may be better able to supply the wants incident to his station in life than another who is absolutely richer. It is he who is destitute of principle who may be most easily bribed, even if he is above want, and he who, whether he has principle or not, is in want of money to supply his necessities: the guilt of him who takes a bribe, merely because he loves it, is inexcusable; the offence of him who sells his vote to supply his necessities, has its excuse. But what excuse is there for the man who buys the unwilling vote of a starving man? If it should be said that a less sum will buy a dishonest poor man's vote than that of his dishonest richer neighbour, the proposition would be true, but not fruitful in any practical consequences.

Every elector may be compelled to take the oath against bribery and corruption at the time when he gives his vote. Blackstone observes, "It might not be amiss if the member elected were bound to take the oath [against bribery and corruption]; which in all probability would be much more effectual than administering it only to the electors." If any party should be compelled to take such an oath or make such a declaration, it certainly should be the candidate. It would not be difficult to frame an oath or declaration so comprehensive as to include every possible mode of bribery that could be practised by a candidate or by his agent, or by anybody else with his knowledge and consent. The Romans directed all their legislative measures against the candidate, because it was easier to deal with him than all the electors, and because the proof of bribery is easier, when the receiver is not punishable, but the giver is. The English legislation punishes both electors and candidates when bribery is proved, and so renders the proof of bribery almost impossible; and it does not require from the candidate the security of the oath or the declaration that may be required of the elector. It is difficult to understand how it should be supposed, as some suppose, that a declaration from a candidate might not be made effectual, that is, so full and complete as to prevent him from taking the oath or making the declaration if he was privy to bribery; and it is still more difficult to understand why the experiment has not been made, except on the supposition that the members of the

legislature have not hitherto been in earnest in their attempts to prevent bribery at elections.

If there are to be penalties for bribery at elections, they should fall solely on the candidates. It may be objected that if this were so, attempts would be made in the heat of contested elections to charge a man with bribery who was innocent of it, and it is easy to suppose that unprincipled men would sometimes attempt to maintain such a charge. But as the proof of bribery by a candidate is not easy, even when he has actually bribed, it would not be made easier if he had not bribed. And as the case against him should be proved by most unexceptionable evidence, so the failure to substantiate a charge should be visited with costs heavy enough to deter dishonest men from making it. There remains a difficulty which arises out of the expenses incident to elections as they are now carried on, which are paid by the candidate, and are not expenses incurred for the purpose of buying votes directly or indirectly: these are expenses of printing, of committee-rooms, and of other things which are incident to what is considered fair canvassing. If public opinion were what it ought to be, or if the system of representation were placed on a sound basis, the candidate should pay nothing. The necessary expenses should be paid by the electoral district. There are no doubt difficulties connected with this branch of the subject, which could only be satisfactorily removed by those who are fully conversant with the nature and practice of elections. When the legislature shall take these matters in hand, and fairly grapple with all the difficulties attendant on elections, people will then believe that they really wish to put an end to the corrupt purchase of votes; when they shall see the legislature attempt to secure the purity of the elected as much as the purity of the electors, and not visit with equal or similar penalties the man who attempts to buy his way into the House of Commons by violating the Law, and the man who assists him by taking the bribe that is offered.

The effect that secret voting might probably have in preventing bribery, has been much considered of late years and with great ingenuity of argument on both sides. 'An Argument in favour of the Ballot,' by W. D. Christie, M.P., contains also reference to the opinions of the late Mr. Mill, Mr. Grote, and others on this subject. A pamphlet entitled 'Is the Ballot a Mistake?' by S. C. Denison, contains, among other arguments against the ballot, the argument against its being likely to prevent bribery, and also much valuable historical information on the subject of voting at elections.

The mode in which bribery was managed at the election at Sudbury in 1841 is explained in the 'Report of the Commissioners to inquire into the existence of Bribery in the Borough of Sudbury, 1844.' It was fully proved that "Systematic and extensive Bribery prevailed at the last election of Members of Parliament in this Borough." (*Commissioners' Report.*) Sudbury was disfranchised in 1844 by the act 7 & 8 Vict. c. 53.

The mode of investigating alleged cases of bribery by Election Committees is explained under ELECTIONS. The House of Commons have shown on several recent occasions a determination not to flinch from investigating cases of bribery; a circumstance which encourages us to expect that the subject will soon receive from them the consideration that its importance entitles it to. [CHILTERN HUNDREDS.]

BRICK, used in building, and too commonly known to require description. It is noticed here as an article on which a tax is levied. The activity of this manufacture is one of the most unerring indications of prosperity. In 1756 a tax on bricks and tiles was proposed by the ministry, but they were forced to give it up. (Walpole's *Letters*, iii. 203.) Mr. Pitt proposed bricks as an article of taxation in his budget of 1784; and though the opposition to such a tax was very great, his measure was carried, and an excise duty upon them was imposed by 24 Geo. III. c. 24. The duty was at first 2*s.* 6*d.* per 1000 on bricks of all kinds, or less than one-half of the present rate of duty. By 34 Geo. III. c. 15, an additional duty of 1*s.* 6*d.* per 1000 was imposed. In 1802 distinctions, which are still retained, were introduced in the denominations of bricks,

and they were subjected to different rates of duty. (43 Geo. III. c. 69.) The duties have been increased at different times, and are now as follows:—Bricks not exceeding 10 inches long, 3 inches thick, and 5 inches wide, are charged 5*s.* 10*d.* per 1000; exceeding these dimensions, 10*s.*; smoothed or polished bricks, not exceeding 10 inches by 5, are charged 2*s.* 5*d.* per 100; and exceeding these dimensions, 4*s.* 10*d.* per 100. Ireland is exempted from duty. The duty on tiles was repealed in 1833. The number of bricks brought to charge, and the amount of duty, was as follows, in 1840-1-2 and 3:—

	Number.	Duty.
1840	1,725,628,383	£524,420
1841	1,463,257,575	449,060
1842	1,303,814,731	400,086
1843	1,184,388,666	363,375

In 1842 the duty charged in England was 390,210*l.* on 1,271,872,112 bricks, and in Scotland 9875*l.* on 31,942,619 bricks. The number made in England and Scotland, at different periods within the present century, has been as follows:—

	England.	Scotland.	Total.
1802	698,596,954	15,291,789	713,888,743
1811	950,547,173	18,765,582	969,312,755
1821	899,178,510	14,052,590	913,231,100
1831	1,125,462,408	27,586,173	1,153,048,581

The difference between 1821 and 1840 is nearly 90 per cent. The increase in houses somewhat exceeds the increase of population; for while the population of England and Wales, from 1831 to 1841, increased 14·5 per cent., the increase of houses was 18·6 per cent.; and the actual increase from 1831 to 1841 in England and Wales was 515,813 houses: the total number returned in 1841 was 3,142,031. It is to the increase of manufactories and the construction of railroads that we must look for the great increase in the trade of brick-making. As many bricks have been used in a single railway tunnel (the Box tunnel on the Great Western railway) as have been made in Scotland in a year. The number of bridges on a line of railway is said to average 2¼ per mile, and in their construction a very large number of bricks is used. There are several viaducts in which above eleven million bricks have been required. A greater number of bricks is made in Middlesex and Lancashire than in any other part of the kingdom. In 1838 the duty on bricks in England and Wales amounted to 419,103*l.*; and the amount contributed in the Manchester collection was 33,967*l.*, or nearly one-tenth of the whole. In 1836 the duty for the same collection was 56,379*l.* The demand for bricks for the metropolis is principally shown by the duty obtained in the following Excise collections: — London, 20,319*l.*; Uxbridge, 21,225*l.*; Rochester, 20,247*l.*

The number of brickmakers (that is, persons having brick-kilns) in England in 1835 was 5711, and in Scotland 128. In 1841 the number of persons employed in brickmaking, according to the census, was 18,363 for Great Britain, of whom 470 were females. The number for each country separately was, England, 16,840; Wales, 312; and Scotland, 1142.

The kind of building material in use in different parts of the kingdom is determined in some measure by natural causes. In Scotland, for example, few bricks are used, because an untaxed material, equally suitable, is everywhere abundant.

The duty is imposed when the brick is in a wet state, when, in fact, it is a lump of clay; and it is necessary to make an allowance, as compensation for bricks destroyed in the kiln, or injured by the weather and other causes: this allowance is 10 per cent. The duty of 5*s.* 10*d.* per 1000 on common bricks is said to be equal to an addition of 8*s.* to the price, which is about one-third of their value. The value of bricks made annually is not less than 1,500,000*l.* taking one year with another. There is a duty on the importation of bricks of 15*s.* per 1000, and 7*s.* 6*d.* if from British possessions.

Looking at the state of the dwellings of the poor in this country, the tax on bricks must be regarded as an impolitic tax, like all other taxes on building materials. The legislature has evidently thought it so as far as churches are concerned, by allowing a drawback on these duties which, on an average, saves nearly 300*l.* for each church. The drawback allowed on materials used in building the church of St. Pancras, London, was 3653*l.*

Another objection to the tax is, that it is a charge on one kind of material from which others, used for the same purpose, are exempt. When the duty on bricks was first imposed, the brickmakers were told that other kinds of building materials should also be taxed, and a heavy customs' duty was laid on stones and slate; but the effect was felt to be injurious, as an obstruction to such works as docks, bridges, &c. The duty on stone was therefore first repealed by 4 Geo. IV. c. 59, and next the duty on slates, about six years afterwards, by 1 & 2 Will. IV. c. 52. There was immediately a large increase in the consumption of slates, and as a matter of justice the duty on tiles was repealed. As there is now no duty either on stone or slate, it is clear that the conditions held out to the brickmakers, when the duty was first imposed on their manufacture, have been violated. The distinctions in the rates of duty occasion a good deal of trouble, without the revenue being adequately benefited. In 1835 the duty on polished bricks did not amount to 5000*l.* The charge on these bricks is also a check upon ornamental architecture. The duty on bricks is precisely one of that class which should be repealed, and the deficiency made up by some other tax that would bear equally on all who are able to pay it. The brick duty is the subject of the 18th Report of the Commissioners of Excise Inquiry, issued in 1836.

BRIDEWELL, a name frequently given to houses of correction. St. Bride's well, near the church of St. Bride, in Fleet Street, was one of the holy wells of London, and in its vicinity Edward VI. founded an hospital, which was afterwards converted into a receptacle for disorderly apprentices, in fact, into a House of Correction, for which purpose it is still used. Houses of correction in different parts of the country are called bridewells, in consequence of the hospital in Blackfriars having been the first place of confinement in which penitentiary amendment was a leading object.

BRIDGES are of two classes, public and private. Public bridges may be considered either as county bridges or as highways, although the principle of that distinction does not seem very clear. Every county bridge is a highway, inasmuch as it is a bridge over which a highway passes; it is therefore in that respect strictly a highway: so also is every other public bridge over which a highway passes. The usual distinction drawn between them is derived from the nature of the space over which the bridge gives a passage. A county bridge, or, in other words, a bridge which the county is bound to repair, is usually defined to be "a common and public building over a river or water flowing in a channel, more or less definite; whether such river or channel is occasionally dry or not." This is evidently a very loose definition, for it does not prescribe the width of the river, or the nature of its channel; but it seems clear that a county bridge must pass over a water, as the county would certainly not be bound to repair a bridge erected across a ravine, or over an ancient road crossed by a new road, having no reference to water. A county bridge may be either a foot, horse, or carriage bridge. A private bridge is any bridge which does not answer the description of a county bridge or a public highway. It is subject to no other laws than the general laws of property.

The liability to repair a county bridge depends either on the common law or on the statute law. By the common law the expense of maintaining both county bridges and highways is to be defrayed by the public, this having been part of the trinoda necessitas to which every man's estate was formerly subject. [TRINODA NECESSITAS.] But the burden of repair of county bridges is thrown on the whole county, that of highways on the inhabitants of the parish wherein such highways lie. Primâ facie, therefore, by the common law the whole county is liable to repair a county bridge; but they may rebut this presumptive liability by showing that for some reason or other the burden has been shifted from them on another. They may either show that a hundred, or a parish, or some other known portion of a county is by custom chargeable with the repair of a bridge erected within it; or that some person,

individual or corporate, is liable to that expense. In the case of private individuals, such liability may depend either on tenure; that is, by reason that they and those whose estate they have in the lands or tenements are liable in respect thereof;—or on prescription. In the case of corporate bodies, on prescription only. With regard to corporate bodies, Lord Coke says, "If a bishop or prior, &c. hath at once or twice of almes repaired a bridge, it bindeth not (and yet is evidence against him, until he prove the contrary); but if time out of mind they and their predecessors have repaired it of almes, this shall bind them to it." (2 *Inst.* 700.) Any bridge answering the definition above given of a county bridge may become a charge upon the county even though not originally built by the county; as, for instance, if it be built by the crown or by a private individual: but not every bridge which answers the above definition is therefore chargeable to the county for repair, unless it be also used by and useful to the public. The public use and benefit seem to be the criterion: and if a private individual build a bridge of any sort, which is principally for his own benefit and only collaterally of benefit to others, he will be liable to the repair, and not the public: but where the public derive the principal benefit, they must sustain the burden of repairing it, on the ground that it would greatly discourage public-spirited persons from erecting useful bridges if they were ever after to be burdened with the costs of repair. The county are even liable to the repair of a public bridge erected by commissioners under an act of parliament, even though the commissioners are empowered to raise tolls in order to support it, or though other funds are provided for the repairs; unless there be a special provision for exonerating them from the common law liability, or transferring it to others. This common law liability of a county to repair a public bridge is so strong, that although it has been erected and constantly repaired by trustees under an act of parliament, and although there are funds for the repairs, the county are still liable to repair it. And where trustees under a turnpike act build a bridge across a stream, where a culvert would have been sufficient, but a bridge was better for the public, it was held that the county could not refuse to repair such bridge on the ground that it was not absolutely necessary.

The first statute on this subject is the 22 Henry VIII. c. 5, called "the Statute of Bridges." This statute is merely in affirmance of the common law. In course of time, owing to the indistinctness of the principle on which public bridges were divided into county bridges and highways, it was found expedient to pass an act to clear up the doubts and difficulties arising from this principle. In order, therefore, to ascertain more clearly the description of bridges hereafter to be erected, which inhabitants of counties shall and may be bound or liable to repair and maintain, it is enacted by stat. 43 Geo. III. c. 59, § 5, that no bridge hereafter to be erected in any county at the expense of any individual or private person, body politic or corporate, shall be deemed to be a country bridge, unless it shall be erected in a substantial and commodious manner under the direction or to the satisfaction of the county surveyor, or person appointed by the justices of the peace at quarter-sessions to superintend and inspect the work. This act applies only to bridges newly built, and not to those repaired or widened.

It was found in very early times that many practical difficulties arose from the indistinctness of the common law as to the precise limits of a bridge—that is to say, as to the precise point where it ceased to be a bridge and began to be a highway; and vice versâ. This indistinctness gave rise to many disputes about the liability to repair, and it was found expedient to enact, by stat. 22 Henry VIII. c. 5, § 9, that such part and portion of the highways as lie next adjoining to the ends of any bridges within this realm, distant from any of the said ends by the space of 300 feet, be made, repaired, and amended as often as need shall require; and that the justices of the peace should act respecting the repairs of such highways as they were empowered to act respecting the bridges themselves. The effect of this statute was merely to limit

or fix the length of road which the county was to repair at 300 feet. By the common law the county was bound to repair the roadway at the end of every county bridge, but the length was not precisely determined till the passing of the above statute.

But this liability of the county has been very much narrowed by the stat. 5 and 6 Will. IV. c. 50, § 21 (the General Highway Act), which, with respect to bridges to be built after the 20th of March, A.D. 1836, enacts, "that if any bridge shall hereafter be built, which bridge shall be liable by law to be repaired by and at the expense of any county, or part of any county, then and in such case all highways leading to, passing over, and next adjoining to such bridge shall be from time to time repaired by the parish, person, or body politic or corporate, or trustees of a turnpike road, who were by law, before the erection of the said bridge, bound to repair the said highways: provided, nevertheless, that nothing herein contained shall extend to exonerate any county or part of any county from repairing the walls, banks, or fences of the raised causeways and raised approaches to any such bridge or the land arches thereto."

Till late years, no persons could be compelled to build or to contribute to the building of any new bridge, except by act of parliament; and even when the county was bound to repair a bridge, it was not therefore bound to widen it. Nor could the inhabitants of a county by their own authority change the situation of a bridge. But by the stats. 14 Geo. II. c. 33, § 1, and 43 Geo. III. c. 59, § 2, the justices in quarter-sessions are enabled to compel the county to widen or change the situation of old bridges, or build new ones. (See also 54 Geo. III. c. 90, which extends some of the provisions of those statutes.)

With respect to the appointment of surveyors of county bridges, their duties and powers, and the modes in which such powers are to be exercised, see stats. 22 Hen. VIII. c. 5, § 4; 43 Geo. III. c. 59 (coupled with stat. 5 & 6 Will. IV. c. 50); 54 Geo. III. c. 90; 55 Geo. III. c. 143. The various provisions of these statutes are very numerous.

For the mode of taxing and collecting the moneys necessary for the repairs of bridges and the highways at the ends thereof, see stat. 22 Hen. VIII. c. 5.; Anne 1. stat. 1, c. 18; 12 Geo. II. c. 29; 52 Geo. III. c. 110; 55 Geo. III. c. 143.

In case of non-repair or nuisances, either to bridges or highways, the modes of prosecution are the same: namely, by criminal information, presentment, or indictment. Generally speaking, an action cannot be maintained against the county by an individual for the non-repair of a county bridge, unless in some cases of special damage accruing to such individual from the non-repair.

A criminal information is very rarely resorted to, and only in cases of either very aggravated neglect, or where there seems to be little chance of obtaining justice by preferring an indictment.

The presentment of a public bridge for non-repairs, &c. may by common law be before the King's Bench or at the Assizes. By the stat. 22 Hen. VIII. c. 5, § 1, presentments may be made before the justices in general sessions, and they may proceed therein in the same manner as the judges of the King's Bench were in the habit of doing, "or as it should seem by their directions to be necessary and convenient for the speedy amendment of such bridges." See also for minor regulations respecting presentments, 1 Anne, sess. 1, c. 18; 12 Geo. II. c. 29, § 13; 55 Geo. III. c. 143, § 5.

The indictment of a county bridge is subject to the same rules as any other indictment. And though the whole county be liable to the repairs, any particular inhabitant of a county, or tenant of land charged to the repairs of a bridge, may be made defendant to an indictment for not repairing it, and be liable to pay the whole fine assessed by the court for the default of repairs, and shall be put to his remedy at law for a contribution from those who are bound to pay a proportionable share in the charge.

The malicious destruction or damaging of public bridges is said to be punishable as a misdemeanour at common law, since it is a nuisance to all the king's subjects. By 7 & 8 Geo. IV. c. 30, § 13, it is enacted, "that if any person shall unlaw-

fully and maliciously pull down or in anywise destroy any public bridge, or do any injury with intent, and so as thereby to render such bridge, or any part thereof, dangerous or impassable, every such offender shall be guilty of felony."

For further information, see Lord Coke's 'Second Inst.;' Burn's 'Justice;' Russell 'On Crimes.' For the law of bridges, viewed as highways, see WAYS.

BRIEF (in law) means an abridged relation of the facts of a litigated case, with a reference to the points of law supposed to be applicable to them, drawn up for the instruction of an advocate in conducting proceedings in a court of justice. Briefs vary in their particular qualities according to the nature of the court in which the proceedings are pending, and of the occasion in which the services of an advocate are required; but in general they should contain the names and descriptions of the parties, the nature and precise stage of the suit, the facts of the litigated transaction, the points of law intended to be raised, the pleadings, the proofs, and a notice of the anticipated answers to the client's case. It is the practice to endorse on the brief the fee which is to be paid to the advocate; and the general usage is to pay the fee when the brief is delivered to the advocate, or at least as soon as he has discharged his undertaking by arguing the matter in court for which he is retained by the brief.

BRIEF, commonly called CHURCH BRIEF, or KING'S LETTER. This instrument consisted of a kind of open letter issued out of Chancery in the king's name, and sealed with the privy seal, directed to the archbishops, bishops, clergymen, magistrates, church-wardens, and overseers of the poor throughout England. It recited that the crown thereby licensed the petitioners for the brief to collect money for the charitable purpose therein specified, and required the several persons to whom it was directed to assist in such collection. The origin of this custom is not altogether free from doubt; but as such documents do not appear to have been issued by the crown previously to the Reformation, they may possibly be derived from the papal briefs which, from very early periods of the history of the church, were given as credentials to mendicant friars, who collected money from country to country, and from town to town, for the building of churches and other pious uses. It is probable that, as soon as the authority of the pope ceased in England, these briefs began to be issued in the king's name. They appear to have been always subject to great abuse; and the 4 Anne, c. 14, after reciting that "many inconveniences arose and frauds were committed in the common method of collecting charity money upon briefs," enacted a variety of provisions for their future regulation, and, among others, prohibited, by heavy penalties, the practice which had previously prevailed, of farming briefs, or selling, upon a kind of speculation, the amount of charity-money to be collected. Still these provisions were evaded, and heavy abuses arose; and the collection by briefs in modern times was found to be a most inconvenient and expensive mode of raising money for charitable purposes. According to the instance given in Burn's 'Ecclesiastical Law,' tit. "Brief," the charges of collecting 614*l.* 12*s.* 9*d.*, for repairing a church in Westmoreland, amounted to 330*l.* 16*s.* 6*d.*, leaving therefore only a clear collection of 283*l.* 16*s.* 3*d.* The patent charges amounted to 76*l.* 3*s.* 6*d.*, and the "salary" for 9986 briefs at 6*d.* each, to 249*l.* 13*s.*, and an additional "salary" for London 5*l.* This expensive and objectionable machinery (in the exercise of which the interests of the charity to be promoted were almost overwhelmed in the payment of fees to patent officers, undertakers of briefs and clerks of the briefs, charges of the king's printers, and other contingent expenses) was abolished by the 9 Geo. IV. c. 42, which wholly repealed the statute of Anne, except as to briefs then in course of collection. By the 10th section of 9 Geo IV. c. 42, it is enacted, "that as often as his Majesty shall be pleased to issue his royal letters to the Archbishops of Canterbury and York respectively, authorizing collection within their provinces for the purpose of aiding the enlarging, building, rebuilding, or repairing of

churches and chapels in England and Wales, all contributions so collected shall be paid over to the treasurer of the 'Incorporated Society for promoting the enlargement, building, and repairing of churches and chapels,' and be employed in carrying the designs of the society into effect." This statute does not interfere with the authority of the crown as to granting briefs; its only effect is to abolish the machinery introduced by the statute of Anne. Briefs may be issued under the common law authority of the crown. The latest brief, or king's letter, was issued for the purpose of collecting subscriptions to relieve the distress of the manufacturing districts in 1842.

BRIEF, PAPAL, is the name given to the letters which the pope addresses to individuals or religious communities upon matters of discipline. The Latin name is Brevis, or Breve, which in the Latinity of the lower ages meant an epistle or written scroll. The French in the old times used to say Brief for a letter, and the Germans have retained the word Brief with the same meaning to this day. The difference between a brief and a bull in the language of the Papal chancery is this: the briefs are less ample and solemn instruments than bulls, and are like private letters addressed to individuals, giving the papal decision upon particular matters, such as dispensations, release from vows, appointments to benefices in the gift of the see of Rome, indulgencies, &c.; or they are mere friendly and congratulatory letters to princes and other persons high in office. The apostolical brief is usually written on paper, but sometimes on parchment; it is sealed in red wax with the seal of the Fisherman (*sub annulo Piscatoris*), which is a symbol of St. Peter in a boat casting his net into the sea. (Ciampini, *Dissertatio de Abbreviatorum Munere*, cap. iii.) A bull is a solemn decree of the pope in his capacity of head of the Catholic church: it relates to matters of doctrine, and as such is addressed to all the members of that church for their general information and guidance. The bulls of excommunication launched by several popes against a king or a whole state are often recorded in history. The briefs are not signed by the pope, but by an officer of the papal chancery, called Segretario dei Brevi: they are indited without any preamble, and, as just observed, are written generally upon paper. The bulls are always on parchment, and sealed with a pendent seal of lead or green wax, representing on one side the heads of St. Peter and St. Paul, and on the reverse the name of the pope and the year of his pontificate: their name comes from the Latin "bulla," a carved ornament or stamp. The bulls of indulgences are general, and addressed to all the members of the church; the briefs of indulgences are addressed to particular individuals or monastic orders for their particular benefit.

BROKER, a person employed in the negotiation and arrangement of mercantile transactions between other parties, and generally engaged in the interest of one of the principals, either the buyer or the seller, but sometimes acting as the agent of both. As it usually happens that brokers apply themselves to negotiations for the purchase and sale of some particular article or class of articles, they by that means acquire an intimate knowledge of the qualities and market value of the goods in which they deal, and obtain an acquaintance with the sellers and buyers as well as with the state of supply and demand, and are thus enabled to bring the dealers together and to negotiate between them on terms equitable for both. A merchant who trades in a great variety of goods and products drawn from different countries and destined for the use of different classes, cannot have the same intimate knowledge, and will consequently find it advantageous to employ several brokers to assist him in making his purchases and sales. There are separate brokers in London for nearly all the great articles of consumption.

Ship-brokers form an important class in all great mercantile ports. It is their business to procure goods on freight or a charter for ships outward bound; to go through the formalities of entering and clearing vessels at the Custom House; to collect the freight on the goods which vessels bring into the port, and generally to take an active part in the management of all business matters occurring between

the owners of the vessels and the merchants, whether shippers or consignees of the goods which they carry. In the principal ports of this kingdom almost all ship-brokers are insurance-brokers also, in which capacity they procure the names of underwriters to policies of insurance, with whom they settle the rate of premium and the various conditions under which they engage to take the risk, and from whom they receive the amount of their respective subscriptions in the event of loss. Should this loss be partial, it becomes the duty of the broker to arrange the proportions to be recovered from the underwriters. The business of an insurance-broker differs from that of other brokers in one particular. Other brokers, when they give up the name of the party for whom they act, incur no responsibility as to the fulfilment of the conditions of the contract, but an insurance-broker is in all cases personally liable to the underwriters for the amount of the premiums. He does not, on the other hand, incur any liability to make good the amount insured to the owner of the ship or goods, who must look to the underwriter alone for indemnification in case of loss. Under these circumstances, it is the duty of the insurance-broker to make a prudent selection of underwriters. Merchants frequently act as insurance-brokers.

Exchange-brokers negotiate the purchase and sale of bills of exchange drawn upon foreign countries, for which business they should have a knowledge of the actual rates of exchange current between their own and every other country, and should keep themselves acquainted with circumstances by which those rates are liable to be raised or depressed; and they should besides acquire such a general knowledge of the transactions and credit of the merchants whose bills they buy, as may serve to keep their employers from incurring undue risks. Persons of this class are sometimes called bill-brokers; and there is another class called discount-brokers, whose business it is to employ the spare money of bankers and capitalists in discounting bills of exchange which have some time to run before they become due.

Every person desirous of acting as a broker for the purchase and sale of goods within the city of London must be licensed by the lord mayor and court of aldermen, and must be a freeman. The number of admissions annually is from fifty to sixty, and the number retiring is about the same. The applicant must present a petition accompanied by a certificate signed by at least six respectable persons, who must state how long they have known him. He must next attend the court, and answer questions put to him as to his connections and business, and whether he has been insolvent. The question as to his admission is then put, and if carried in the affirmative he is required to attend at the town-clerk's office with three sureties (who need not be freemen), two for his good behaviour as a broker, and one (who may be one of the former two) for his annual payment of the sum of 5*l.* to the city. He is bound himself in the penalty of 1000*l.*, two of the sureties for 250*l.* each, and one for 50*l.* The annual payment claimed by the city can be traced back to the time of Henry VIII., when it was 40*s.*, but was increased to 5*l.* by 57 Geo. III. c. 60. When the above conditions have been complied with, the applicant must attend another court of aldermen, when he is sworn for the faithful discharge of his duties, without fraud or collusion, and to the utmost of his skill and knowledge. He further binds himself not to deal in goods upon his own account—a stipulation which is very commonly broken. It is the indispensable duty of a broker to keep a book in which all the contracts which he makes must be entered, and this book may be called for and received as evidence of transactions when questioned in courts of law. Twelve persons of the Hebrew nation are appointed sworn brokers in the city; and on a vacancy the appointment is sold to the highest bidder, according to Mr. Montefiore's Dictionary of Commerce, and has sometimes fetched 1500*l.* Any person acting as a broker without having procured a licence or paid the fees, is liable to a fine of 100*l.* for every bargain which he may negotiate. The court of aldermen have power to discharge a broker for miscon-

duct, but only three cases occurred in the twelve years preceding 1837, in which the penalty of the bond had been enforced. Many persons are allowed to remain on the broker's list who have become bankrupt. The list comes annually under the review of the Committee of City Lands, but solely with reference to the annual payment. There is a condition in this bond, which the brokers are sworn to, that renders it imperative on them to declare in writing the names of all whom they shall know to exercise the office unauthorisedly; but as few persons are willing to appear in the invidious light of an informer, the rule is not observed. The Commissioners of Corporation Inquiry remark, in their Report:—"It seems to be the prevalent opinion in the City of London, that some superintendence of brokers is necessary, and that traders, especially strangers, are liable to gross frauds if it is not efficient;" but they are not satisfied that it is now lodged in the proper quarter, and they doubt, if, in the case of stock-brokers, the present conditions of the sworn broker's bond could be enforced at all. There is an officer, appointed by the city, called the collector of broker's rents, who is paid 7½ per cent. on the gross amount collected. His income is from 265*l.* to 275*l.* per annum. He requires the brokers to renew their sureties when necessary, and looks generally to the carrying out of the regulations of the court of aldermen.

In the Guild Roll of Leicester, under date 1289-90, there is an entry of an order which prohibits any broker or any other stranger approaching the balances in the merchants' houses, except they were buyers or sellers; and for a fourth breach of this regulation the offender was to be placed under the "ban" of the guild for a year and a day.

The business of a stock-broker is that of buying and selling, for the account of others, stock in the public funds, and shares in the capitals of joint-stock companies. They are not a corporate body, but belong to a subscription-house, and are admitted by a committee. About one-half of them are sworn brokers. A few years ago the City obtained a verdict in a prosecution of some members of the Stock Exchange for acting as brokers without being duly admitted by the Court of Aldermen. The brokers object to the regulation which requires them to make known the name of the principal for whom they act and prohibits them from dealing themselves; both of which conditions are incompatible with the nature of their business. The acts of parliament, by which the proceedings of stock-brokers should in certain cases be regulated (7 Geo. II. c. 8, and 10 Geo. II. c. 8), have long been dead letters; more especially the enactment that every bargain or contract for the purchase and sale of stock which is not made *bonâ fide* for that purpose, but is entered into as a speculation upon the fluctuations of the market, is declared void, and all parties engaging in the same are liable to a penalty of 500*l.* for each transaction.

Within the last few years there has been a large increase in the number of share-brokers, not only in London, but in all the large towns, where formerly there were scarcely any persons of this class. They transact business and effect transfers in canal and railway shares, and in the shares of joint-stock banks, gas, water, and other local works which are established by a numerous body of proprietors. The capital already invested in railways is not less than 80,000,000*l.*, or one-tenth of the national debt, and this large sum is divided into shares of from 25*l.* to 100*l.* each, which fluctuate in value from day to day, and by the facility with which they may be transferred encourage speculative purchasers amongst persons of almost every class, from the large capitalist to those who can only raise a sufficient sum to buy a single share. The business of this comparatively new class of brokers is also much increased by the immense number of new railroads projected, of which in 1844 there were above two hundred brought forward, the shares in all of which soon become an object of traffic. It has been said that one hundred and thirty-one of the railways of 1844 would require capital to the amount of 95,000,000*l.*. The 'Bankers' Magazine' (December, 1844) gives the following as the scale of charges in use among

share-brokers: when the purchase-money of the share is

Under £5	. .	1*s.* 3*d.*	per share.
„ 20	. .	2 6	„
„ 50	. .	5 0	„
„ 100	. .	10 0	per cent.

There is besides a stamp-duty payable on transfers of railway-shares and shares in joint-stock companies generally. The stamp-duty is 10*s.* when the purchase-money of the share is under 20*l.*; above 20*l.* and under 50*l.* it is 1*l.*; and rises by a graduated scale according to the amount of purchase-money.

On completing a transaction in railway or other shares of a joint-stock company, the brokers give a "contract note" to their employers as evidence of the nature of the business done on their account. By 7 & 8 Vict. c. 110, the sale and transfer of railway shares before the "complete registration" of the Railway Company is placed on the same footing as "time bargains" on the Stock Exchange, and cannot be enforced in a court of law. § 26 enacts, "with regard to subscribers and every person entitled or claiming to be entitled to any share in any Joint-Stock Company," formed after 1st November, 1844, that "until such Company shall have obtained a certificate of 'complete registration,' and until such subscriber or person shall have been duly registered as a shareholder" in the office of the London Register, "it shall not be lawful for such person to dispose by sale or mortgage of such share, or of any interest therein," and all contracts to this effect shall be void, and "every person" entering into such contracts shall forfeit not less than 10*l.* All Companies begun after the 5th of September, 1844 (the date when the act was passed), are subject to this enactment (§ 60).

It is usual to apply the name of broker to persons who buy and sell second-hand household furniture, although such an occupation does not bear any analogy to brokerage as here described: furniture dealers buy and sell generally on their own account, and not as agents for others. These persons do indeed sometimes superadd to their business the appraising of goods and the sale of them by public auction under warrants of distress for rent, for the performance of which functions they must provide themselves with a licence, and they come under the regulations of an act of parliament (57 Geo. III. c. 93). [APPRAISER.]

Custom-house brokers, or, as they are more commonly termed, agents, are licensed by the commissioners of Customs, and no person without such licence can transact business at the Custom-house or in the port of London relative to the entrance or clearance of ships, &c.

The business of a pawnbroker is altogether different from that of the commercial brokers here described. [PAWNBROKER.]

BROTHEL. [PROSTITUTION.]

BUDGET. The annual financial statement which the Chancellor of the Exchequer, or sometimes the First Lord of the Treasury, makes in the House of Commons, in a committee of ways and means, is familiarly termed "the Budget." The minister, whichever of them it is, gives a view of the general financial policy of the government, and shows the condition of the country in respect to its industrial interests. This is of course the time to present an estimate of the probable income and expenditure for the twelve months ending the 5th of April in the following year; and to state what taxes it is intended to reduce or abolish, or what new ones to impose; and this is accompanied by the reasons for adopting the course which the government proposes. The speech of the Chancellor of the Exchequer in bringing forward the budget is naturally looked forward to with great interest by different classes: if the revenue be in a flourishing condition and a surplus exists, all parties are anxious to learn how far their interests will be affected by a reduction of taxes; and if the state of the national finances render it necessary to impose additional taxes, this interest is equally great. The Chancellor of the Exchequer concludes by proposing resolutions for the adoption of the committee. These resolutions, "when afterwards reported to the House, form the groundwork of bills for accomplishing the financial objects proposed by the minister." (May's *Parliament*, p. 331.)

BUILDING, ACTS FOR REGU-

LATING. Provisions for regulating the construction of buildings are generally introduced into acts for the improvement of towns. To permit houses of wood or thatched roofs in confined and crowded streets, would be to sacrifice the public welfare to the caprice or convenience of individuals. There is no general measure ensuring uniformity of regulations for buildings throughout the country. In the session of 1841 the Marquis of Normanby, then a member of the government, brought in a bill "for the better Drainage and Improvement of Buildings in large Towns and Villages," but it did not pass; and a bill of a similar nature was unsuccessful in the session of the following year. In the session of 1844, however, an act was passed (7 & 8 Vict. c. 84) entitled 'An Act for Regulating the Construction and the Use of Buildings in the Metropolis and its Neighbourhood;' and this measure, though applicable at present only to London, promises to be an important step towards improving the condition of large towns, and with certain modifications it will probably be extended to other places. The act came into operation on the 1st of January, 1845. London has had Building Acts ever since the reign of Queen Anne; but their object was chiefly to enforce regulations calculated to check the spread of fire. The last Building Act, commonly called Sir Robert Taylor's Act (14 Geo. III. c. 78), was passed in 1774, "for the further and better regulation of buildings and party walls, and for the more effectually preventing mischiefs by fire." It extended to the cities of London and Westminster, and their liberties and other places within the bills of mortality, and to the parishes of St. Marylebone, Paddington, St. Pancras, and St. Luke's, Chelsea. The administration of the act was confided to district surveyors, each of whom had independent authority within his own district; but the magistrate at the nearest police-office might enforce or not, at his own discretion, the decisions of the surveyor. The technical regulations of this act were many of them, generally speaking, of so impracticable a nature that their evasion was connived at by the officers appointed to superintend the execution of the law; and it did nothing to discourage the erection of imperfect buildings in districts which have become a part of the metropolis since it was passed. Whether the new act (7 & 8 Vict. c. 84) contains regulations equally impracticable remains to be seen. Some of them probably are of this nature, as may be expected in attempts to legislate on technical matters of detail; but the object of the act is excellent, and any defects in carrying it out may be corrected without much difficulty. The removal of sources of danger and disease in crowded neighbourhoods, by enforcing ventilation and drainage, and by other means, is in itself both wise and benevolent. The window tax will prove, in several respects, a great impediment to theact being fully carried out.

The objects of the Metropolitan Buildings Act may be gathered from the preamble, which is as follows:—"Whereas by the several acts mentioned in schedule (A.)* to this Act annexed provisions are made for regulating the construction of buildings in the metropolis, and the neighbourhood thereof, within certain limits therein set forth; but forasmuch as buildings have since been extended in nearly continuous lines or streets far beyond such limits, so that they do not now include all the places to which the provisions of such acts, according to the purposes thereof, ought to apply, and moreover such provisions require alteration and amendment, it is expedient to extend such limits, and otherwise to amend such acts: and forasmuch as in many parts of the metropolis and the neighbourhood thereof, the drainage of the houses is so imperfect as to endanger the health of the inhabitants, it is expedient to make provision for facilitating and promoting the improvement of such drainage; and forasmuch as by reason of the narrowness of streets, lanes, and alleys, and the want of a thoroughfare in many places, the due ventilation of crowded neighbourhoods is often impeded, and the health of the inhabitants thereby endangered, and

* These acts are 14 Geo. III c. 78, partly repealed; 50 Geo. III. c. 75, wholly repealed; and 3 & 4 Vict. c. 85, repealed so far as it relates to flues and chimneys.

from the close contiguity of the opposite houses the risk of accident by fire is extended, it is expedient to make provision with regard to the streets and other ways of the metropolis for securing a sufficient width thereof: and forasmuch as many buildings and parts of buildings unfit for dwellings are used for that purpose, whereby disease is engendered; fostered, and propagated, it is expedient to discourage and prohibit such use thereof: and forasmuch as by the carrying on in populous neighbourhoods of certain works, in which materials of an explosive or inflammable kind are used, the risk of accidents arising from such works is much increased, it is expedient to regulate not only the construction of the buildings in which such dangerous works are carried on, but also to provide for the same being carried on in buildings at safe distances from other buildings which are used either for habitation or for trade in populous neighbourhoods: and forasmuch as by the carrying on of certain works of a noisome kind, or in which deleterious materials are used, or deleterious products are created, the health and comfort of the inhabitants are extensively impaired and endangered, it is expedient to make provision for the adoption of all such expedients as either have been or shall be devised for carrying on such businesses, so as to render them as little noisome or deleterious as possible to the inhabitants of the neighbourhood; and if there be no such expedients, or if such expedients be not available in a sufficient degree, then for the carrying on of such noisome and unwholesome businesses at safer distances from other buildings used for habitation: and forasmuch as great diversity of practice has obtained among the officers appointed in pursuance of the said acts to superintend the execution thereof in the several districts to which such acts apply, and the means at present provided for determining the numerous matters in question which constantly arise tend to promote such diversity, to increase the expense, and to retard the operations of persons engaged in building, it is expedient to make further provision for regulating the office of surveyor of such several districts, and to provide for the appointment of officers to superintend the execution of this Act throughout all the districts to which it is to apply, and also to determine sundry matters in question incident thereto, as well as to exercise in certain cases, and under certain checks and control, a discretion in the relaxation of the fixed rules, where the strict observance thereof is impracticable, or would defeat the object of this Act, or would needlessly affect with injury the course and operation of this branch of business: now for all the several purposes above mentioned, and for the purpose of consolidating the provisions of the law relating to the construction and the use of buildings in the metropolis and its neighbourhood, be it enacted," &c.

The principal officers appointed to carry the act into effect are two Official Referees, a Registrar of Metropolitan Buildings, and Surveyors. The immediate superintendence of buildings is confided by the act to the surveyors, who are appointed for each district by the court of aldermen in the city, and by the justices at quarter-sessions for other parts of the district. In all cases of dispute or difficulty the official referees appointed by the Secretary of State and the Commissioners of Woods and Forests will determine the matter, instead of the appeal being to the police magistrates, as was formerly the case. The official referees are also empowered to modify technical rules. The registrar, who is appointed by the Commissioners of Woods and Forests, is required to keep a record of all matters referred to the official referees and to preserve all documents connected with their proceedings.

The third section of the act defines the limits to which the act shall extend, which are as follows:—"To all such places lying on the north side or left bank of the river Thames as are within the exterior boundaries of the parishes of Fulham, Hammersmith, Kensington, Paddington, Hampstead, Hornsey, Tottenham, St. Pancras, Islington, Stoke Newington, Hackney, Stratford-le-Bow, Bromley, Poplar, and Shadwell; and to such part of the parish of Chelsea as lies north of the said parish of Kensington; and to all such parts and places lying on the south side or right bank of the said river, as are within

the exterior boundaries of the parishes of Woolwich, Charlton, Greenwich, Deptford, Lea, Lewisham, Camberwell, Lambeth, Streatham, Tooting, and Wandsworth; and to all places lying within two hundred yards from the exterior boundary of the district hereby defined, except the eastern part of the said boundary which is bounded by the river Lea."

By § 4 power is given to the queen in council to extend the above limits to any limits within twelve miles of Charing Cross, notice of such extension being published in the 'London Gazette' one month previously.

The surveyor and overseers of the place in which buildings in a ruinous state may be situated, are required to apply to the official referees to authorize a survey to be made thereof. A copy of the surveyor's certificate is to be forwarded to the overseers (or to the lord mayor and aldermen, if within the City of London), and they are required to cause such ruinous building to be securely shored or a sufficient hoard to be put up for the safety of all passengers; and they are also to give notice to the owner to repair or pull down the whole or part of the building within fourteen days. An appeal lies to the official referees, and if the owner refuses to repair or pull down premises certified to be in a ruinous state, this may be done by the overseers, or in the City by order of the lord mayor and aldermen; and the materials may be disposed of to pay the costs of every description which may have been incurred; and if any surplus remains, it is to be paid to the owner. But if the proceeds from this sale of materials are not sufficient to cover the expenses, the deficiency is to be made up by the owner of the property, and may be levied under warrant of distress; and if there are no goods or chattels to levy, the occupier of the premises may be required to pay, and he can deduct the amount from his rent. The same course which the act directs as to buildings in a ruinous state may also be followed in reference to chimneys, roofs, and projections, so far as relates to repairing or making them secure. If the projection be from the front walls of any building and be in danger of falling, the occupier, or if not the occupier the owner ,may be required to take down or secure the same within thirty-six hours; and a penalty of five pounds is incurred for every day during which the projection complained of is allowed to remain unrepaired or in a dangerous state.

The subject of party walls, party fences, and intermixed buildings is regulated by §§ 20 to 39, and the following provisions are made as to their reparation, pulling down, or raising. If the consent of the adjoining owner is not obtained, notice must be given him three months before the work is commenced, and the adjoining owner may obtain an order on application to the official referees for such a modification of the work as will render it suitable to his premises. If the consent of the adjoining owner cannot be obtained, the matter is to be referred to the surveyor, and the official referees may reject or confirm his certificate, and award the proportion of expenses, &c. The decision of the official referees is to be final and conclusive.

The 51st clause provides for a proper drainage. Before the walls of any building shall have been built to the height of ten feet, drains must have been properly built and made good leading into the common sewer, or if there be no sewer within one hundred feet, then to the nearest practicable outlet. If there be a common sewer within fifty feet of a new building, a cesspool must not be made without a good and sufficient drain leading to it. A cesspool under a house or other building must be made air-tight. Privies built in the yard or area of any building must have a door and be otherwise properly inclosed, screened, and fenced from public view.

The act also fixes the width of new streets and alleys. Every street must be of the width of forty feet at the least; and if the buildings be more than forty feet high from the level of the street, the street must be at least equal in width to the height of the houses or buildings. Every alley and every mews must be at least twenty feet in width, and if the buildings are higher, the width must be increased in proportion, so as to be at least equal to the height.

The 53rd clause is of great importance in reference to the sanitary condition of the poor. It provides that from and after July 1, 1846, it shall not be lawful to let separately to hire as a dwelling any room or cellar not constructed according to the rules specified in schedule K, nor to occupy or suffer it to be occupied as such, nor to let, hire, occupy, or suffer to be occupied any such room or cellar, built under ground for any purpose, except for a warehouse or storeroom. The official referees and the registrar of metropolitan buildings soon after the passing of the act issued forms to the overseers of the poor within their district, in order to assist the parochial authorities in making a return, which must be ready by January 1, 1845, of all rooms which under the act are deemed unfit for dwellings, but which are now occupied as such. The building regulations contained in schedule K are as follows:—"With regard to back yards or open spaces attached to dwelling-houses, every house hereafter built or rebuilt must have an enclosed back yard or open space of at the least one square [a square is defined by the act to be 100 square feet], exclusive of any building thereon, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of at the least three-quarters of a square above the level of the second story, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto. And if any house already built be hereafter rebuilt, then, unless all the rooms of such house can be lighted and ventilated from the street, or from an area of the extent of at the least three-quarters of a square, into which the owner of the house to be rebuilt is entitled to open windows for every room adjoining thereto, there must be above the level of the floor of the third story an open space of at the least three-quarters of a square. And to every building of the first class must be built some roadway, either to it or to the enclosure about it, of such width as will admit to one of its fronts of the access of a scavenger's cart. With regard to the lowermost rooms of houses, being rooms of which the surface of the floor is more than three feet below the surface of the footway, and to cellars of buildings hereafter to be built or rebuilt, if any such room or cellar be used as a separate dwelling, then the floor thereof must not be below the surface or level of the ground immediately adjoining thereto, unless it have an area, fireplace, and window, and unless it be properly drained. And to every such lowermost room or cellar there must be an area not less than three feet wide in every part, from six inches below the floor of such room or cellar to the surface or level of the ground adjoining to the front, back, or external side thereof, and extending the full length of such side; such area, to the extent of at least five feet long and two feet six inches wide, must be in front of the window, and must be open, or covered only with open iron gratings. And for every such room or cellar there must be an open fireplace, with proper flue therefrom, with a window-opening of at the least nine superficial feet in area, which window-opening must be fitted with glazed sashes, of which at the least four and a half superficial feet must be made to open for ventilation. With regard to rooms in the roof of any building hereafter built or rebuilt, there must not be more than one floor of such rooms, and such rooms must not be of a less height than seven feet, except the sloping part, if any, of such roof, which sloping part must not begin at less than three feet six inches above the floor, nor extend more than three feet six inches on the ceiling of such room. With regard to rooms in other parts of the building, every room used as a separate dwelling must be of at the least the height of seven feet from the floor to the ceiling.

§§ 54 and 55 provide for the restraint and eventual removal from populous neighbourhoods of trades which are dangerous, noxious, or offensive. Businesses dangerous as to fire must not be nearer than fifty feet to other buildings; and new businesses of this character must be forty feet from public ways. Persons are not in future to establish or newly carry on any such businesses within fifty feet of other buildings or forty feet from public ways; and all such businesses now

carried on within the distances limited by the act must be given up twenty years after the passing of the act. A penalty of 50*l.* is incurred for erecting buildings in the neighbourhood of any such businesses, and 50*l.* per day for carrying on businesses of a dangerous kind contrary to the act. The persons offending may be imprisoned for six months if the penalty be not paid. The businesses of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, sheep, or horses, soap-boiler, tallow-melter, tripe-boiler, and any other business offensive or noxious, are to be subject to similar regulations as those deemed dangerous as to fire, and are to be discontinued at the end of thirty years after the passing of the act. Trades deemed nuisances may be removed by purchase at the public cost on memorial by two-thirds of the inhabitants, and on the issue of an order in council. Public gas-works, distilleries, and other works under the survey of the Excise are exempted from the operation of the provisions contained in §§ 54 and 55.

The whole number of clauses in the act is 118; and there are schedules of great length. They involve matters of technical detail, which it would be useless to give: our object is only to exhibit the general character of this important legislative measure.

BULLETIN, a French word which has been adopted by the English to signify a short authentic account of some passing event, intended for the information of the public. Bulletin is derived from "bulla," a sealed dispatch. (Ducange, *Glossarium.*) When kings and other persons of high rank are dangerously ill, daily bulletins are issued by the physicians, relative to the state of the patient. In times of war, and after a great battle, bulletins are sometimes issued from the head-quarters of the victorious army, and are sent off to the capital to inform the people of the success. This practice became common with the French grand army under the immediate command of the Emperor Napoleon from the time of the campaign of Austerlitz in 1805 till the abdication in 1814.

BULLION, a term which is strictly applicable only to uncoined gold and silver, but which is frequently used in discussions relating to subjects of public economy to denote those metals both in a coined and an uncoined state. In the Bank of England Charter Act (7 & 8 Vict. c. 22) the circulation of notes by the Issue department of the Bank is fixed at a certain amount, and any addition to the circulation must be based on bullion only. The proportion of silver bullion to be retained in the Issue department must not exceed one-fourth part of the gold coin and bullion. All persons may demand of the Issue department notes in exchange for gold bullion at the rate of 3*l.* 17*s.* 9*d.* per ounce of standard gold, to be melted and assayed by persons appointed by the Bank, at the expense of the persons who tender the bullion. [BANK.] For an account of the sources of supply, &c., of gold and silver see PRECIOUS METALS.

BULLS, PAPAL. Letters issued from the papal chancery, and so named from the *bulla* or leaden seal which is appended to them. The difference between bulls, briefs, and other apostolical rescripts, is noticed under the word BRIEF. Bulls are written on parchment. If they regard matters of justice, the seal is affixed by a hempen cord; if of grace, by a silken thread. The seal bears on the obverse heads of St. Peter and St. Paul; on the reverse, the name of the pope, and the date of the year of his pontificate. In France, in Spain, and in most other kingdoms professing the Roman Catholic faith, bulls are not admitted without previous examination. In England, to procure, to publish, or to use them, is declared high treason by 13 Eliz. c. 2. The name bull has also been applied to certain constitutions issued by the emperors. In affairs of the greatest importance bullæ of gold were employed, whence they were called Golden Bulls.

Eleven folio volumes, published at Luxemburg, between 1747 and 1758, contain the bulls issued from the pontificate of Leo the Great to that of Benedict XIV., from A.D. 461 to A.D. 1757. The two most celebrated among them are, that *In Cœnâ Domini*, which is read every year, as these words imply, on the day of

the Lord's Supper (Maundy Thursday): it denounces various excommunications against heretics and other opponents of the Romish see: 2, the bull *Unigenitus*, as it is called from its opening words, "*Unigenitus Dei filius*," issued by Clement XI. in 1713, condemning 101 propositions in Quesnel's work, or, in other words, supporting the Jesuits against the Jansenists in their opinions concerning divine grace.

The most remarkable *Imperial Bull* is that approved by the Diet of the Germanic empire in 1356, in which Charles IV. enumerated all the functions, privileges, and prerogatives of the electors, and all the formalities observed in the election of an emperor, which were considered as fundamental laws till the dissolution of the Germanic body in 1806. We believe that the Latin original is still preserved at Frankfort with the golden seal or *bulla*, from which it derives its name, appendant to it.

BURGAGE TENURE denotes the particular feudal service or tenure of houses or tenements in ancient cities or boroughs. It is considered to be a species of socage, as the tenements are holden of the king or other lord, either by a certain annual pecuniary rent, or by some services relating to trade or handicraft, such as repairing the lord's buildings, providing the lord's gloves or spurs, &c., but "no way *smelling* of the plough or tillage" (Somner *On Gavelkind*, 142-148), and having no relation to military service. (Spelman's *Glossary, ad verbum.*) The incidents of this tenure, which prevailed in Normandy as well as in England, vary according to the particular customs of each borough, in consequence of the maxim that, in improper feuds (to which class this tenure belongs), the *lex et consuetudo loci* are always to be observed. (Wright's *Tenures*, p. 205.)

Burgage tenure is supposed by Littleton and other writers to have been the origin of the rights of voting for members of parliament in cities and boroughs; and the great variety of those rights is in some measure accounted for by supposing them to be founded upon varying local customs. It is, however, impossible to trace the gradual steps by which the irregular rights of voting in boroughs for members of parliament, which are continued by the Reform Act (2 Will. IV. c. 45) until the extinction of existing interests, were derived from burgage tenure.

BURGESS. [MUNICIPAL CORPORATIONS; COMMONS, HOUSE OF.]

BURGOMASTER, BURGERMEISTER, is the title of the chief magistrate of a municipal town, answering to the English mayor. In the German free towns the bürgermeister is the president of the executive council of the republic. This is also the case at Zürich, Basel, Schaffhausen, and some other Swiss cantons; while at Bern, Freyburg, and Luzern the corresponding magistrate is called schultheiss (in French "avoyer"), and in the rest of the cantons landamman; which last is not a German, but a Swiss term.

BURIAL. [INTERMENT.]

BURNEL, ACTON, STATUTE OF. This statute was passed at Acton Burnel, in Shropshire, at a parliament held by Edward I. in the eleventh year of his reign, on his return from Wales. Acton Burnel was never even a market-town, and Leland says (*Itin.* vii. 19) that the parliament was held in a great barn. The date of the statute is October 12, 1283. It is remarkable as a proof of the importance which the mercantile class had acquired, and its object was to recover more quickly debts due to merchants and traders. Hence it is called the Statute of Merchants (Statutum Mercatorum).

The preamble recites, that "Forasmuch as merchants which heretofore have lent their goods to divers persons be greatly impoverished because there is no speedy law provided for them to have recovery of their debts at the day of payment assigned; and by reason hereof many merchants have withdrawn to come into this realm with their merchandises, to the damage as well of the merchants as of the whole realm;" and therefore "the king by himself and his council ordain and establish" certain remedies for the evils complained of. (*Stat. of Realm*, i. 53.)

The merchant was to bring his debtor

before the mayor of London, York, or Bristol, or before the mayor and a clerk who was appointed by the king, to acknowledge the debt, and fix a time for payment. The clerk entered the recognizance, and also made a writing obligatory, to which the debtor affixed his seal. The king's seal, provided for the purpose, and kept by the mayor, was likewise appended to the instrument. If the debtor neglected to pay his debt at the time appointed, the mayor ordered his chattels and devisable burgages to be sold, to the amount of the debt, by the appraisement of honest men. The moveables were to be delivered to the creditor if no buyer came forward. In case the debtor's moveables were out of the mayor's jurisdiction, the chancellor was to direct a writ to the sheriff of the county, who was to act with the same authority as the mayor. The statute contains several provisions relating to the sale. To guard against the appraisers' favouring the debtor by fixing too high a price on his goods, they might themselves be forced to take them at their own unfair valuation; and in that case they became answerable to the creditor for the debt. The statute inferred, on the other hand, that if the goods sold below their value, it was the debtor's fault. If the debtor had no effects, he was to be imprisoned until he or his friends had come to some agreement with the creditor; and the creditor was bound to provide him with bread and water, if he were so poor as to be unable to support himself: but the cost of his maintenance added to the original debt, and was required to be repaid before the debtor could obtain his release. The creditor might accept sureties or mainpernors, who by this act placed themselves precisely in the same situation as the debtor; but they were not liable till the goods of the principal had been sold and found insufficient.

The statute of Acton Burnel was further explained and new provisions added by 13 Edw. I. stat. 3, passed in 1285. The first statute appears to have been misinterpreted by the sheriffs, and its execution delayed on malicious and false pretences. The king, therefore, in a parliament held in his thirteenth year, caused the statute of Acton Burnel to be rehearsed, and another Statutum Mercatorum (13 Edw. I. stat. 3) was passed, which extended and gave additional facilities for enforcing the statute of Acton Burnel. Recognizances might be taken before the mayor of London, or before some chief warden of a city or of another good town which the king should appoint, or before the mayor and chief warden or other sufficient men chosen or sworn thereto, when the mayor or chief warden could not attend, and before one of the clerks appointed by the king. If the debtor failed to make good his payment at the time promised in his recognizance, he was, if a layman, to be placed at once in prison. If he could not be found, the merchant might have writs to all the sheriffs in whose jurisdiction the debtor had lands; and as a last resource the merchant might have a writ directed to any sheriff that he pleased to take the debtor's body. The keeper of the prison became answerable for the debt if he refused to take custody of the debtor. Within a quarter of a year the chattels and lands were to be delivered to the creditor for sale in payment of his debt. If within the second quarter he did not make terms, all his goods and lands were to be delivered, the latter as if a gift of freehold, to the creditor, to hold until the debt was paid; the debtor being maintained on bread and water by the merchant. Precautions were taken against the debtor fraudulently making over his property. Lands given away by feoffment subsequently to the recognizance were to return to the feoffer. The death of the debtor did not bar the debt; for though the body of the heir could not be taken, his lands were answerable as much as during the lifetime of the debtor. The Jews were excluded from the benefits of the statute. (*Stat. of Realm*, i. 98.)

Reeves (*Hist. of the English Law*, ii. 162) observes that the above statute may be "considered as contributing to extend the power of alienating land." Any common creditor by judgment was empowered in the same session to take half the debtor's land in execution, "but a merchant who had resorted to this security might have the whole." He adds that "a recognizance acknowledged with

the formalities [here] described was in after times called a statute merchant;" and "a person who held lands in execution for payment of his debt, as hereby directed, was called tenant by statute merchant." Barrington (*Obs. on the more Ancient Statutes*, p. 119) states that in 1536 an ordinance of Francis I. was issued, which very much resembled the statutes merchant, and shows, he says, "the more early attention paid to commerce in this country."

BUTTER, one of the most important of the secondary articles of necessity, and, next to corn and cattle, perhaps the most valuable source of agricultural wealth. In many countries it is also of great commercial importance. All the butter that is produced in England is consumed at home, and a large quantity is imported besides from Ireland, Holland, and other countries. The consumption of butter in London is estimated by M'Culloch at 15,357 tons annually, of which 2000 tons are supplied to shipping. At 10*d.* per lb. for 34,400,000 lbs., the value consumed of this article amounts to 1,433,333*l.* The consumption per head in this estimate is assumed to be 5 oz. weekly, or 16 lbs. per annum. The value of the butter consumed in Paris in 1842 (*Annuaire* of the Board of Longitude) was 443,301*l.*, which, at 10*d.* per lb., would give a total consumption of above 10¼ million lbs. The population of London is about double that of Paris, but the habits of consumption of any particular article may differ very widely in the two capitals; and in the case of London all that can be done is to arrive at an estimate which may approximate towards the truth. Of the total consumption of butter in the United Kingdom it would be useless to form a conjecture. Whenever the manufacturing population is prosperous, the consumption is always enormously increased. Not being an absolute necessary, it is natural that the consumption of such an article as butter should diminish when the resources of the population are less abundant than usual.

For the five years ending 1825 the quantity of butter imported annually from Ireland was 422,883 cwts., and from foreign countries 159,332 cwts. In 1835 the imports from Ireland were 827,009 cwts., valued at 3,316,306*l.*; and in 1836 the import of foreign butter was 240,738 cwts., making a total of 1,067,747 cwts., or 53,387 tons. The imports from Ireland cannot be given for any year subsequent to 1835, but the imports from foreign countries, within the last few years, have been as follows:—

	Cwts.		Cwts.
1838	256,193	1841	277,428
1839	213,504	1842	175,197
1840	252,661	1843	151,996

About two-thirds of the foreign supply is usually imported from Holland.

In 1842 the imports were—from Denmark 5047 cwts.; Germany 45,346; Holland 112,778; Belgium 3996; British North America 3615; from the United States of North America 3769 cwts.; and small quantities arrived from France, the Channel Islands, and a few other places. In 1801 the duty on foreign butter was 2*s.* 9*d.* per cwt. and 3 per cent. *ad valorem;* and in 1813, after several successive intermediate additions, it was 5*s.* 1¾*d.* per cwt. The duty was raised to 20*s.* the cwt. in 1806, at which rate (with 5 per cent. added, making 21*s.* per cwt.) it still continues; but by the tariff of 1841 (5 & 6 Vict. c. 47) the duty on butter from British possessions was fixed at 5*s.* the cwt. (with 5 per cent. added, 5*s.* 3*d.*), and in the course of the following year the imports of colonial butter increased from 1971 cwts. to 4843 cwts. The duty on foreign butter exceeds 2*d.* per lb., and in 1841 produced 262,618*l.*, but in the following year, owing to a falling off in the imports, only 187,921*l.*

The butter exported from the United Kingdom is entirely the produce of Ireland, but the quantity is not separately distinguished from the exports of cheese, and cannot therefore be given. In 1843 the quantity of butter and cheese together exported was 71,130 cwts., valued at 253,340*l.* In 1842 the exports of the two commodities were 61,603 cwts., of which 23,858 were to the West Indies, 16,796 to Brazil, 8223 to Portugal, 4818 to the Australian Colonies, 1903 to the East Indies, 1465 to British North America, and

the remainder in small quantities to other parts.

In the 'Dictionary of the Farm,' by the late Rev. W. L. Rham, it is said that, by paying sufficient attention to the minutiæ of the dairy, to the purity of the salt used, and especially to cleanliness, there is no reason why the rich pastures of England and Ireland should not produce as good butter as those of Holland, which now enjoys so deserved a pre-eminence for its butter. Mr. Rham gives the following information relative to the production of butter:—"We may state that, on an average, four gallons of milk produce sixteen ounces of butter; and to make the feeding of cows for the dairy a profitable employment in England, a good cow should produce 6 lbs. of butter per week in summer, and half that quantity in winter, or, allowing for the time of calving, about 200 lbs. a year" (Art. Butter, *Dict. of Farm*). Mr. M'Gregor, in his valuable 'Commercial Statistics' (i. p. 897) states that a superior dairy farm in South Holland, on which 50 cows are kept, is expected to produce annually 4000 lbs. of butter and 9000 lbs. of cheese. The quality of dairy produce in Ireland has been greatly improved within the last few years, and both in that country and in England, in some districts, greater attention to the minutiæ to which Mr. Rham alludes, would add considerably to the value at present obtained from the land.

BY-LAW. By-laws are the private regulations of a society or corporation, agreed upon by the major part of the members, for more conveniently carrying into effect the object of the institution.

It is not every voluntary association to which the law of England gives the power of binding dissentient members by the rules made by the majority. Immemorial custom or prescription, or legal incorporation by the king, or some act of parliament, is necessary to confer the power of making by-laws; and even in those cases the superior courts of law can take cognizance of the by-law, and establish its legality or declare it to be void. In order to stand this test a by-law must be reasonable and agreeable to the law of England, and must not attempt to bind strangers unconnected with the society, or to impose a pecuniary charge without a fair equivalent, or to create a monopoly, or to subject the freedom of trade to undue restraint. The general object of a by-law is rather to regulate existing rights than to introduce new ones or to extinguish or restrain the old.

The power of making by-laws is not confined to corporate bodies. It is in some instances lawfully exercised by a class of persons having no strict corporate character. Thus the tenants of a manor, the jury of a court-leet, the inhabitants of a town, village, or other district, frequently enjoy a limited power of this kind, either by special custom or common usage. But in general the power is exercised only by bodies regularly incorporated, and in such bodies the power is inherent without any specific provision for that purpose in the charter of their incorporation.

Our own term *by-law* is of Saxon origin, and is supposed by some writers to be formed by prefixing to the word *law* another word *by* or *bye*, which means *house* or *town*. Hence its primary import is a *town-law*, and in this form and with this meaning it is said to be found among the ancient Goths, the Swedes, the Danes, and other nations of Teutonic descent. (Cowel, voc. "Bilaws;" Spelman *On Feuds*, chap. ii., and the Glossaries under the head "Bilago, or Bellago.") But it seems a simpler explanation to suppose that by-law means a subsidiary or supplemental law. The modern German "beilage," "addition," or "supplement," is in fact the same word as by-law; and the prefix "by" is common in the English language. In German the equivalent prefix *bei* is still more common.

The act for the regulation of municipal corporations, 5 & 6 Wm. IV. c. 76, gives to the town councils a power of making by-laws for the good rule and government of the boroughs, and for the suppression of various nuisances; and of enforcing the observance of them by fines limited to 5*l*. It directs however that no by-laws so framed shall come into operation until they have been submitted to the privy council for the king's approval—a precaution resembling in some degree the

provisions of the statute 19 Hen. VII. c. 7, by which the ordinances of trading guilds were made subject to the approbation of the chancellor, treasurer, chief justices, or judges of assize.

Under the Joint-Stock Companies Act, 7 & 8 Vict. c. 110, §§ 47, 48, provision is made for registering by-laws of such companies, as a condition of their being in force.

In Scotland there is very little common law on the subject of by-laws. The institutional writers say generally that every corporation, or other community, may make its own by-laws, provided they do not infringe on the law of the land; but there are hardly any precedents on the subject.

C.

CABAL is often applied to a set of persons too insignificant in point of number to form a party who endeavour to effect their purposes by underhand means. The ministers of Charles II., Clifford, Ashley, Buckingham, Arlington, and Lauderdale, the initials of whose names happen to form the word cabal, were called the "Cabal Ministry." The word "cabal" appears to come from the French *cabale*, a term employed to express a number of persons acting in concert; and it is generally understood in a bad sense. (Richelet, *Diction.*) The remote origin of the word is probably the Rabbinical Cabala. We are not aware that it was used in our language before the time of Dryden.

CABINET. According to the constitution of England, the king is irresponsible, or, as the phrase is, he can do no wrong. The real responsibility rests with his ministers, who constitute what is termed the Cabinet. In their collective capacity they are called also the Administration, the Ministry, his Majesty's Ministers, or the Government. The king may dismiss his ministers if they do not possess his confidence, and he is dissatisfied with their policy. But this is a step not to be lightly hazarded, for if a ministry is supported by a majority of the House of Commons, the change would be useless, as the measures of a new ministry, of different principles, could not be carried in opposition to the opinions of a majority of the Commons, and the functions of government would be paralysed. A ministry may, therefore, retain their posts in spite of the well-known dislike of the king. He may dissolve Parliament and appeal to the country, and in this way may gain his object; but he may also be foiled in the attempt. If the ministers resign from inability to carry their measures, or are dismissed, the king sends for some leader of the party opposed to the late ministers and authorises him to form a new cabinet. The individual who thus receives the king's commands selects from those who are friendly to his policy the members of the new cabinet, and usually takes the post of Prime Minister himself. The Prime Minister is generally First Lord of the Treasury. The ministry is spoken of frequently as the ministry of the person who is its head. The other principal members of the Cabinet are the Lord Chancellor, the three Secretaries of State for Home, Colonial, and Foreign Affairs, and the Chancellor of the Exchequer. It should contain members of both Houses of Parliament. Other heads of public departments may also be called upon to take a seat in the Cabinet, as the First Lord of the Admiralty, the Postmaster-General, the President of the Board of Trade, the President of the Board of Control, the Secretary at War, the Paymaster-General, the Chief Secretary of Ireland, the Master of the Mint, all of whom have been Cabinet ministers at one time or another within the last twelve years. In the ministry of Earl Grey the Earl of Carlisle had a seat in the Cabinet without any office; but in this case it is usual to take the post of Lord Privy Seal or Lord President of the Council. One of the members of the present Cabinet, who fills the office of Lord Privy Seal, has no executive duties apart from his being a member of the Cabinet Council. It has not been usual for the Commander-in-Chief to be a member of the Cabinet; but this is the case at present (1845). Lord Mansfield was a Cabinet minister at the time he was Lord Chief-Justice of England; but this is also an exception.

The Privy Council was formerly the adviser of the king in all weighty matters of state. Affairs were debated and determined by vote in his presence, subject, however, to his pleasure. This body was, probably, too numerous for the dispatch of executive business. Some of the members of this body would be selected by the king for more private advice, as persons in whom he had greater confidence than the rest. This was an approximation to the Cabinet as now constituted. The period when this change became decidedly marked was in the reign of Charles I., though no formal constitutional change had yet been made. Speaking of this period Mr. Hallam says:—"The resolutions of the Crown, whether as to foreign alliances or the issuing of orders and proclamations at home, or any other overt act of government, were not finally taken without the deliberation and assent of that body (the Privy Council) whom the law recognized as its sworn and notorious counsellors." (*Const. Hist.*, ii., p. 537.) The next step was to render the ratification of measures of state by the Privy Council a matter of form. In the reign of Wm. III. Mr. Hallam states, that "the distinction of the Cabinet from the Privy Council and the exclusion of the latter from all business of state became fully established." The feeling in favour of the old constitutional practice was sufficiently strong to occasion the introduction of a clause in the Act of Settlement (4 Anne, c. 8) providing that on the accession of the House of Hanover, all regulations upon measures of public policy should be debated in the Privy Council, and be signed by them; but the clause was repealed in about two years afterwards by 6 Anne, c. 7. Mr. Hallam is of opinion that in devolving upon the Cabinet the functions formerly exercised by the Privy Council the power of the members of the executive government has been greatly increased, and their responsibility seriously diminished, even if it is not altogether illusory. But this is a matter on which there may be a difference of opinion. The change seems calculated to render an administration more consistent and efficient. The Privy Council is, even now, occasionally assembled to deliberate on public affairs, but only those counsellors attend who are summoned. Proclamations and orders still issue from the Privy Council, and for the reason, it is said, that the Cabinet Council is not a body recognized by law.

In France, the executive government is divided into nine departments, the heads of which constitute the cabinet. These are the Interior; Justice and Public Worship; Public Instruction; Public Works; Commerce and Agriculture; Finances; Foreign Affairs; War; Marine and Colonies.

In the United States of North America, the following officers of the executive government form the Cabinet, and hold their offices at the will of the President: Secretary of State; Secretary of the Treasury; Secretary of War; Secretary of the Navy; the Postmaster-General.

CACHET, LETTRES DE, were letters proceeding from and signed by the kings of France, and countersigned by a secretary of state. They were called also "lettres closes," or "sealed letters," to distinguish them from the "lettres patentes," which were in the nature of public documents and sealed with the great seal. Lettres de cachet were rarely employed to deprive men of their personal liberty before the seventeenth century. It is said that they were devised by Père Joseph under the administration of Richelieu. They were at first made use of occasionally as a means of delaying the course of justice; but during the reign of Louis XIV. they were obtained by any person who had sufficient influence with the king or his ministers, and persons were thus imprisoned for life, or for a long period, on the most frivolous pretexts, for the gratification of private pique or revenge, and without any reason being assigned for such punishment. The terms of a lettre de cachet were as follows:—"M. le Marquis de Launay, je vous fais cette lettre pour vous dire de recevoir dans mon château de la Bastille le Sieur ———, et de l'y retenir jusqu'à nouvel ordre de ma part. Sur ce, je prie Dieu qu'il vous ait, M. le Marquis de Launay, en sa sainte garde." These letters, which gave power over personal

liberty, were openly sold in the reign of Louis XV. by the mistress of one of the ministers. "They were often given to the ministers, the mistresses, and favourites as *cartes blanches*, or only with the king's signature, so that the persons to whom they were given could insert such names and terms as they pleased." (Welcker.) The lettres de cachet were also granted by the king for the purpose of shielding his favourites or their friends from the consequences of their crimes; and thus were as pernicious in their operation as the protection afforded by the church to criminals in a former age. Their necessity was strongly maintained by the great families, as they were thus enabled to remove such of their connexions as had acted in a derogatory manner. During the contentions of the Mirabeau family, fifty-nine lettres de cachet were issued on the demand of one or other of its members. The independent members of the parliaments and of the magistracy were proscribed and punished by means of these warrants. This monstrous evil was swept away at the Revolution, after Louis XVI. had in vain endeavoured to remedy it.

(Mirabeau, *Des Lettres de Cachet*, &c., 1782; *Translation*, published at London, in two volumes, in 1787; Rotteck and Welcker, *Staats-Lexicon*, art. "Cachet, Lettres de," by Welcker.)

CANON (κανών), a rule. The several senses in which this word is used are all derivatives from its first original sense: and this sense it appears to have acquired, as itself a derivative from *canna*, (we use the Latin form, though in fact both *canna* and *canon* are Greek terms transplanted into the Latin language,) which signifies a *reed* or *cane;* such a plant as produced straight, round, smooth and even shoots, adapted to the purpose of a *rule*; or as we say, a *ruler*, used in drawing straight lines. The word *cannon* is the same with *canon*, and is applied to the instrument of war so called on account of its resemblance to a rule. The word canon is used in mathematics and in music: and also to express certain grammatical rules formed by the critics. But it is more particularly appropriated in the sense of a *rule* in respect of things ecclesiastical. The word was so used by Saint Paul (Gal. vi. 16). 'And as many as walk according to this *rule* (*canon*), peace be on them and mercy, and upon the Israel of God.'

The *rule* here spoken of was the Christian rule, the rule or law of the Christian church: and as these rules became explained or amplified in subsequent times by popes, bishops, councils, whether general or particular, these new rules or explications of the fundamental rules of the Christian church were designated by the term *canones* or *canons*. The collected body of these canons forms what is called The Canon Law, which must be distinguished from the civil law. The civil law is the Roman law as now received in various countries of Europe. [ROMAN LAW.] A doctor of laws in Great Britain is a doctor of both civil and canon law.

Canon is also used for the *rule* of persons who are devoted to a life strictly religious: persons who live according to (religious) rule, such as praying at certain hours, and for a certain length of time, keeping themselves from marriage, eating particular kinds of meat, periodical fastings, and the like. It is applied to the *book* in which the rule was written, and which was read over to such professed persons from time to time: and since in such a book it was not unusual to enter also the names of persons who had been benefactors to the community, which names were recited from time to time with honour, and they were held and reputed to be holy persons or saints (sancti): the entry of such names formed what is meant by *canonization*, though in later times, when it was found that saints multiplied too fast, when every small religious community added any benefactor to their list, the term became confined to such persons as had their names enrolled in the great volume of which the pope, the head of the church, was the sole guardian. It was also applied to *persons* who lived under a rule: as the Augustinian canons, persons who adopted the rule of Saint Augustine. And here the distinction is to be observed of *regular* and *secular canons*. The regular canons were persons who were confined to their own

monasteries, where they practised their rule; the secular canons were persons living indeed a religious life, or one according to some prescribed Christian form and order, but who nevertheless mixed more or less with the world, and discharged the various offices of Christianity for the edification of the laity. This was the species of canons that are found in the cathedral churches, or in other churches called conventual, as at Southwell in Nottinghamshire, which were all churches of very antient foundation, the centres of Christianity throughout an extensive district. There they lived a kind of monastic life under the presidency generally of a bishop; but went out occasionally to introduce Christian truth into districts into which it had not before penetrated, or to instruct the persons lately received into the church, and to perform for them the various ordinances of Christianity. As parish churches arose, the necessity for such visits from the canons in the cathedral churches was diminished. But the institution remained: it was spared at the Reformation, and continues to the present day. These canons are sometimes called prebendaries, a name derived from their being endowed with land or tithe, as many of them are to a greater or less extent, which endowment is called a prebend. [PREBEND.] The canons have stalls in the cathedral churches, which are generally called prebendal stalls. They form the chapter in the expression the dean and chapter, and are still nominally what they actually once were, the council of the bishop for the administration of the affairs of his diocese.

The act 3 & 4 Vict. c. 113, enacted that henceforth all the members of chapter, except the dean, in every collegiate church in England, and in the cathedral churches of St. David and Llandaff, should be styled canons. By this act the term canon is to be applied to every residentiary member of chapter except the dean, heretofore styled either prebendary, canon, canon-residentiary, or residentiary; and the term "minor canon" includes every vicar, vicar-choral, priest-vicar, and senior vicar, being a member of the choir in any cathedral or collegiate church. A canonry, except it is attached to any university office, cannot be held by a person who has not been six years in priest's orders. The term of residence fixed by the act for each canon is three months in the year at the least. The act suspends a great number of canonries, and limits the number to be held in future. The number suspended in the chapters of Canterbury, Durham, Worcester, and Westminster, is six each; Windsor, eight; Winchester, seven; Exeter, three; Hereford, one; and two each in the other cathedral chapters. The profits of the suspended canonries are vested in the Ecclesiastical Commissioners. The suspension of a canonry may be removed under special circumstances, and in the manner provided by the act. The future number of canonries is fixed at six each for the chapters of Canterbury, Durham, Ely, and Westminster; five each for Winchester and Exeter; and four each for the other cathedral or collegiate churches of England; and two each for St. David's and Llandaff. The act increased the canonries of the chapters of Lincoln, and St. Paul's, London, to four. The number of minor canonries is not to exceed four, nor be less than two, for each cathedral or collegiate church, and the salaries are to be not less than 150*l.* Minor canons are not to hold any benefice beyond six miles from their cathedral church. The canonries are in the gift of the archbishops and bishops respectively, but the three canons of St. Paul's, London, are appointed by the crown. The minor canons are appointed by the respective chapters. In some cases it is provided that archdeaconries shall be annexed to canonries. The act also provided for the annexing of two canonries of Christchurch, Oxford, to two new professorships in the university; for annexing two of the canonries of Ely to the regius professorships of Hebrew and Greek at Cambridge; for annexing two canonries of Westminster to the rectories of St. Margaret's and St. John's, in the city of Westminster; and for founding honorary canonries in every cathedral church in England, in which there were not already founded any non-residentiary prebends, dignities, or offices. The honorary canons are entitled to stalls,

and their number in each cathedral church is limited to twenty-four, who are appointed by the archbishops and bishops respectively. This honorary preferment may be held with two benefices. Doubts having been entertained as to the cathedral churches in which honorary canonries were to be founded, it was enacted in 4 & 5 Vict. c. 39, that such cathedral churches were to be those of Canterbury, Bristol, Carlisle, Chester, Durham, Ely, Gloucester, Norwich, Oxford, Peterborough, Ripon, Rochester, Winchester, and Worcester; and the collegiate church of Manchester, so soon as the same should become a cathedral church. The honorary canons have no emolument, nor any place in the chapter; but the patronage of chapters is restricted, and the canons, minor canons, and honorary canons are included amongst the persons to whom vacant benefices in the gift of the chapter must be presented.

From *canon* is formed *canonical*, which occurs in many ecclesiastical terms, as *canonical hours*, *canonical sins*, *canonical punishment*, *canonical letters*, *canonical obedience*, and *canonical scriptures*. The canonical scriptures are the usually received books of the Old and New Testament.

CANON LAW, a collection of ecclesiastical constitutions for the regulation of the Church of Rome, consisting for the most part of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes. The origin of the canon law is said to be coeval with the establishment of Christianity under the apostles and their immediate successors, who are supposed to have framed certain rules or canons for the government of the church. These are called the apostolical canons; and though the fact of their being the work of the apostles does not admit of proof, there is no doubt that they belong to a very early period of ecclesiastical history.

These rules were subsequently enlarged and explained by general councils of the church. The canons of the four councils of Nice, Constantinople, Ephesus, and Chalcedon (which were held at different times in the fourth and fifth centuries), received the sanction of the Emperor Justinian, A.D. 545. (Novel. 131, cap. 1.) The chapter referred to, after confirming the decrees of the four councils, adds, "we receive the doctrines of the aforesaid holy synods (*i. e.* councils) as the divine Scriptures, and their canons we observe as laws." Collections of these canons were made at an early period. The most remarkable of these collections, and that which seems to have been most generally received, is the Codex Canonum, which was compiled by Dionysius Exiguus, a Roman monk, A.D. 520. This body of constitutions, together with the capitularies of Charlemagne and the decrees of the popes from Siricius (A.D. 398) to Anastasius IV. (A.D. 1154), formed the principal part of the canon law until the twelfth century. The power of the popes was then rapidly increasing, and a uniform system of law was required for the regulation of ecclesiastical matters.

This necessity excited the activity of the ecclesiastic lawyers. After some minor compilations had appeared, a collection of the decrees made by the popes and cardinals was begun by Ivo, Bishop of Chartres, A.D. 1114, and perfected by Gratian, a Benedictine monk, in the year 1150, who first reduced these ecclesiastical constitutions into method. The work of Gratian is in three books, arranged and digested into titles and chapters in imitation of the Pandects of Justinian, and is entitled 'Concordia discordantium Canonum,' but is commonly known by the name 'of Decretum Gratiani.' It comprises a series of canons and other ecclesiastical constitutions from the time of Constantine the Great, at the beginning of the fourth, to that of Pope Alexander III., at the end of the twelfth century. The decretals, which were rescripts or letters of the popes in answer to questions of ecclesiastical matters submitted to them by private persons, and which had obtained the authority of laws, were first published A.D. 1234, in five books, by Raimond de Renafort, chaplain to Pope Gregory IX. This work, which consists almost entirely of rescripts issued by the later popes, especially Alexander III., Innocent III., Honorius III., and Gre-

gory IX. himself, forms the most essential part of the canon law, the Decretum of Gratian being comparatively obsolete. These decretals comprise all the subjects which were in that age within the cognizance of the ecclesiastical courts, as the lives and conversation of the clergy, matrimony and divorces, inquisition of criminal matters, purgation, penance, excommunication, and the like. To these five books of Gregory, Boniface VIII. added a sixth (A.D. 1298), called 'Sextus Decretalium,' or the 'Sext,' which is itself divided into five books, and forms a supplement to the first five books, of which it follows the arrangement. The Sext consists of decisions promulgated after the pontificate of Gregory IX. The Clementines, or Constitutions of Clement V., were published by him in the council of Vienna (A.D. 1308), and were followed (A.D. 1317) by those of his successor, John XXII., called Extravagantes Johannis. To these have since been added some decrees of later popes, arranged in five books after the manner of the Sext, and called Extravagantes Communes. All these together, viz. Gratian's Decree, the Decretals of Gregory IX., the Sext, the Clementines, and the Extravagants of John XXII. and his successors, from what is called the Corpus Juris Canonici, or body of canon law. Besides these, the institutes of the canon law were compiled by John Launcelot, by order of Paul IV., in the sixteenth century; but it appears from the author's preface that they were never publicly acknowledged by the popes. In 1661 there was published a collection of the decretals of different councils, which is in some editions of the Corpus Juris Canonici, but this likewise has never received the sanction of the Holy See.

The introduction of this new code gave rise to a new class of practitioners, commentators, and judges, almost as numerous as those who had devoted themselves to the study and exposition of the civil law, from which they looked for aid in all cases of difficulty and doubt. In fact, the two systems of law, though to a certain extent rivals, became so far entwined, that the tribunals of the one were accustomed, wherever their own law did not provide for a case, to adopt the rules that prevailed in those of the other.

The main object of the canon law was to establish the supremacy of ecclesiastical authority over the temporal power, or at least to assert the total independence of the clergy upon the laity. The positions, that the laws of laymen cannot bind the church to its prejudice, that the constitutions of princes in relation to ecclesiastical matters are of no authority, that subjects owe no allegiance to an excommunicated lord, are among the most prominent doctrines of Gratian's Decretum and the decretals. The encroachments of the church upon the temporal power were never encouraged in England. The doctrines of passive obedience and non-resistance, inculcated by the decretals, were not likely to be relished by the rude barons who composed the parliaments of Henry III. and Edward I. Accordingly we find that this system of law never obtained a firm footing in this country: and our most eminent lawyers have always shown great unwillingness to defer to its authority. It is observed by Blackstone (*Com.* i. p. 80) that "all the strength that either the papal or imperial laws have obtained in this realm is only because they have been admitted and received by immemorial usage and custom in some particular cases and some particular courts; and then they form a branch of the *leges non scriptæ*, or customary laws; or else, because they are in some other cases introduced by consent of parliament, and then they owe their validity to the *leges scriptæ*, or statute law." There was indeed a kind of national canon law, composed of *legatine* and *provincial* constitutions, adapted to the necessities of the English Church. Of these the former were ecclesiastical laws enacted in national synods held under the cardinals Otho and Othobon, legates from Pope Gregory IX. and Clement IV. in the reign of Henry III. The provincial constitutions were the decrees of provincial synods held under divers archbishops of Canterbury, from Stephen Langton, in the reign of Henry III., to Henry Chichele, in the reign of Henry V., and adopted also by the province of York in the reign of Henry VI.

(Blackstone, *Com.* i. p. 83; Burn's *Eccl. Law*, Preface.)

With respect to these canons it was, at the time of the Reformation, provided by stat. 25 Henry VIII. c. 19 (afterwards repealed by 1 Philip and Mary, c. 8, but revived by 1 Eliz. c. 1), that they should be reviewed by the king and certain commissioners to be appointed under the act, but that, till such review should be made, all canons, constitutions, ordinances, and synodals provincial, being then already made and not repugnant to the law of the land or the king's prerogative, should still be used and executed. No such review took place in Henry's time; but the project for the reformation of the canons was revived under Edward VI., and a new code of ecclesiastical law was drawn up under a commission appointed by the crown under the stat. 3 & 4 Edward VI. c. 11, and received the name of Reformatio Legum Ecclesiasticarum. The confirmation of this was prevented by the death of the king, and though the project for a review of the old canons was renewed in the reign of Elizabeth, it was soon dropped, and has not been revived.

The result is, that so much of the English canons made previously to the stat. of Henry VIII. as are not repugnant to the common or statute law, is still in force in this country. It has, however, been decided by the Court of King's Bench that the canons of the convocation of Canterbury, in 1603 (which, though confirmed by King James I., never received the sanction of parliament), do not (except so far as they are declaratory of the antient canon law) bind the laity of these realms. (Middleton *v.* Croft; Strange's *Reports*, 1056.) It was, however, admitted by Lord Hardwicke, in delivering judgment in this case, that the clergy are bound by all canons which are confirmed by the king. [CONSTITUTIONS, ECCLESIASTICAL.]

There are two kinds of courts in England, in which the canon law is under certain restrictions used. 1. The courts of the archbishops and bishops and their officers, usually called in our law Courts Christian, *Curiæ Christianitatis*, or ecclesiastical courts. 2. The courts of the two universities. In the first of these, the reception of the canon law is grounded entirely upon custom; but the custom in the case of the universities derives additional support from the acts of parliament which confirm the charters of those bodies. They are all subject to the control of the courts of common law, which assume the exclusive right of expounding all statutes relating to the ecclesiastical courts, and will prohibit them from going beyond the limits of their respective jurisdictions; and from all of them an appeal lies to the king in the last resort.

Before the Reformation, degrees were as frequent in the canon law as in the civil law. Many persons became graduates in both, or *juris utriusque doctores*; and this degree is still common in foreign universities. But Henry VIII., in the twenty-seventh year of his reign, issued a mandate to the university of Cambridge, to the effect that no lectures on canon law should be read, and no degrees whatever in that faculty conferred in the university for the future. (Stat. Acad. Cantab., p. 137.) It is probable that Oxford received a similar prohibition about the same time, as degrees in canon law have ever since been discontinued in England.

The decree of Gratian and the Decretals are usually cited not according to book and title, but by reference to the first word of the canon, which renders it necessary for the reader to consult the alphabetical list of the canons, in order to find out the book, title, and chapter, under which the canon he wishes to consult is to be found.

CAPACITY, LEGAL. [AGE; INSANITY.]

CAPITAL is a term used in commerce to express the stock of the merchant, manufacturer, or trader, used in carrying on his business, in the purchase or manufacture of commodities, and in the payment of the wages of labour; and is understood not only of money, but of buildings, machinery, and all other material objects which facilitate his operations in trade. The term itself and the practical qualities and uses of capital are sufficiently understood in this its commercial sense; but it is the object of the present article to treat of capital in a more extended form, as within the province of political economy, and embracing

not only the capital of particular individuals, but the entire capital of a country. In this latter sense, capital may be defined as the products of industry possessed by the community, and still available for use only, or for further production.

To consider capital in all its relations to the material interests of man, to the increase of population, the employment and wages of labourers, to profits and rent, it would be necessary to travel over the entire range of political economy; but this article will be confined to the following points:—I. The origin and growth of capital. II. Its application and uses.

I. Capital is first called into existence by the natural foresight of man, who even in a savage state discerns the advantage of not immediately consuming the whole produce of his exertions in present gratification, and stores up a part for his future subsistence. The greater proportion of mankind possess this quality, and those who do not possess it are admonished of its value by privation. In civilized life there are many concurrent inducements to accumulate savings; of which the most general are—the anxiety of men to provide for their families and for themselves in old age; social emulation, or their desire to substitute the manual labour of others for their own, and of advancing themselves from one grade to another in society; and a love of ease and luxury, which can only be purchased by present sacrifices.

A desire to accumulate some portion of the produce of industry being thus natural to mankind and nearly universal, the growth of capital may be expected wherever the means of accumulation exist; or, in other words, wherever men are not obliged to consume the whole products of their labour in their own subsistence. From the moment at which a man produces more than he consumes, he is creating a capital; and the accumulated surplus of production over the consumption of the whole community is the capital of a country.

Thus far the origin and growth of capital are perfectly intelligible; but in order to understand completely the progress of accumulation, it will be necessary to advert to certain matters which interfere with its apparent simplicity. As yet no distinction has been noticed, either in the original definition of capital or in the succeeding explanation of its causes, between those parts of the products of labour which are reserved for the reproduction of other commodities, and those parts which are intended solely for use or consumption. These two classes of products have been divided by Adam Smith and others into capital and revenue; by which division all products are excluded from the definition of capital unless they be designed for aiding in further production. The impropriety of this distinction, however, has been pointed out by Mr. M'Culloch ('Principles of Political Economy,' p. 97), and it does not appear that any such division of the stock of a country is founded on a proper distinction. How can its future application be predicated? The fund exists, and so long as it is not sent abroad or consumed it must be regarded as capital. The whole of it may be made available for further production, or the whole may be consumed in present enjoyment; but no part is separable from the rest by an arbitrary classification. A man may choose, hereafter, to spend all his savings in drinking spirits and frequenting the theatres; or he may carefully lay them aside for the employment of a labourer in some profitable work: but in either case the stock has the same capacity for production while in the possession of the owner.

These different modes of expending capital produce very distinct results, both as regards the interests of the individual and of society, which will be examined under the second division of this article, where the application and uses of capital are considered; but here it must be observed that the accumulation of capital proceeds slowly or rapidly in proportion as one or other of these modes of expenditure is most prevalent. If men habitually consumed or wasted all the results of their industry, it is obvious that the effect of such conduct would be precisely the same to themselves, in preventing accumulation, as if they were unable to earn anything more than was absolutely necessary for their support. It is true that

they would enjoy more of the luxuries of life, and, as will presently be seen, their expenditure would conduce, indirectly, to the accumulation of capital by others; but still their labour would only suffice for their own support from year to year, and no part of the produce of last year's labour would be available, in the present year, either for their support or for any other purposes. But when a man, instead of spending the results of a whole year's labour within the year, subsists upon one-half of them, the other half remains to him in the succeeding year, and in the course of two years such economy will have placed him a whole year in advance.

As it is evident from these illustrations, that capital must increase in the ratio in which the products of labour exceed the expense of subsistence, it would seem to follow as a necessary consequence that, when a certain amount of capital has already been produced, the higher the rate of profit which may be obtainable from such capital, the greater will be the means of further accumulation. [PROFITS.] It is not necessary, indeed, that larger savings should in fact be made, as that must depend upon the conduct of those who enjoy the profits. The larger their profits may be, the greater may be their personal expenditure; and a taste for luxury and display may be engendered, the gratification of which may be more tempting than the desire of further accumulation. Nor can it be denied that, in practice, an unusually high rate of profits very often encourages an extravagant expenditure. It is, perhaps, more natural that it should produce self-indulgence rather than stimulate economy. The accumulation of savings is an act of self-denial very necessary and profitable, it is true, but not very pleasing when the sacrifice is about to be made; and its necessity is less obvious when large profits are rapidly secured, than in less prosperous circumstances. When the profits arising from a man's capital, if expended, are already sufficient to satisfy his desires, we cannot wonder if he thinks less of the morrow.

Yet, whether savings proportionate to the means of saving be made or not, it is undeniable that a high rate of profit offers the best opportunity for augmenting capital. If three *per cent.* profit upon a man's stock will enable him to subsist as he has been accustomed, and to lay aside one per cent. annually as capital, the rise of profit to six *per cent.* would at once give him the power of adding four per cent., instead of one, to his capital, so long as he made no change in his style of living: and thus the doubling of the rate of profit would add to the means of accumulation in the proportion of four to one.

Making all due allowances, therefore, for greater profusion of expenditure, the proposition that large profits are favourable to accumulation may be held as demonstrable; for, reverse the circumstances, and suppose that profits were so small as to disable those who were willing to save from retaining any surplus whatever, the result must be precisely the same to themselves as if they had voluntarily consumed the whole excess of their production; while their poverty would not conduce indirectly to accumulation by others, as their expenditure of a surplus might have done.

But, apart from abstract reasoning, does the experience of different countries bear out the same conclusion? In England, for example, was capital accumulated more rapidly while profits were high, than within the last few years? These questions do not always receive the same answer. Mr. M'Culloch compares the progress of the United States of America, in wealth and population, with that of England and Holland, and ascribes the comparative rapidity of their advancement to the fact, that the rate of profit is generally twice as high in America as in either of the other countries. (*Principles of Pol. Ec.*, p. 107.) He adds (p. 110), that if the rates of profit have become comparatively low, the condition of a nation, "how prosperous soever in appearance, is bad and unsound at bottom." Professor Jones, on the other hand, denies this inference, and takes a more encouraging view of the state and prospects of our own country. He says, "That fall of the rate of profits, which is so common a phenomenon as to be almost a constant

attendant on increasing population and wealth, is, it will be seen, so far from indicating greater feebleness in any branch of industry, that it is usually accompanied by an increasing productive power in all, and by an ability to accumulate fresh resources more abundantly and more rapidly. So far, therefore, is this circumstance from being, as it has hastily been feared and described to be, an unerring symptom of national decay, that it will be shown to be one of the most constant accompaniments and indications of economical prosperity and vigour." (*Distribution of Wealth*, Preface, p. xxxii.)

These opinions, apparently conflicting, upon matters of fact, may prove, upon examination, not to be wholly irreconcilable. It is doubtful whether the United States of America be a good example for the purpose of this inquiry, as there have been many concurrent circumstances in operation, in that country, all tending to the same result; and of which high profits may be regarded as the effect rather than the cause. It will be safer, therefore, to confine the examination of the effects of high profits upon accumulation to our own country at different times.

First, then, it will be admitted on all hands that individual fortunes have been more rapidly accumulated in England at those times in which the profits in particular departments of industry were the highest. This admission is no more, in other words, than the truism, that when a trade is prosperous money is made by it. The next question is, whether a high rate of profit in all departments of industry has the same effect in augmenting the sum total of national capital. Political reasoners are too apt to assume a universal analogy between individuals and nations, which is often deceptive, and leads to inaccurate conclusions. In the present instance, if this analogy were allowed, it would be decisive of the whole question, and would exclude all observation of facts. The fact, as stated by Professor Jones, is undeniable, that a fall in the rate of profits is the ordinary accompaniment of increasing population and wealth. There is more capital in England and in Holland, in proportion to the population, than in any country in the world, and in those countries the rate of profit is the lowest. The resources of England have been increasing in an extraordinary manner during the last forty years, as evinced by the productiveness of the property-tax and other imposts, compared with former periods, and as proved by all statistics (Porter's *Progress of the Nation*, sect. vi.); and, at the same time, the more evident the wealth of the country has become, the lower has fallen the general rate of profits.

The examination of the causes of profit is reserved for a separate article [PROFITS]; but here it may be stated that a fall in the rate of profits is the inevitable result of enormous accumulations of capital. Capitalists are forced into competition with each other, and are ultimately obliged to content themselves with lower profits. But, in the meantime, does the aggregate accumulation of national wealth diminish? This inference is contradicted by all the statistics which illustrate the progress and present condition of Great Britain. [CENSUS of 1841.] All evidence shows that British capital is positively overflowing, and seeking employment in every enterprise at home or abroad. It is true that no statistics can decide, with arithmetical precision, the comparative rate of increase in the accumulation of capital at different times; but so far as outward indications of wealth may be relied on, there are very few who are prepared to deny that accumulation is now advancing, in the aggregate, at least as rapidly as ever, in proportion to the population of the country.

This fact, it is submitted, is nevertheless consistent with the general proposition, that high profits are favourable to accumulation. In calculating the aggregate savings of a people already rich and populous, it must be borne in mind, first, that the existing generation has inherited the accumulations of many preceding generations; and, secondly, that a large number of persons continually saving a small portion of their individual gains, may produce a greater aggregate accumulation than the larger proportionate savings of a less number of persons.

With reference to the first point, it need only be observed, that if the inhe-

rited capital be not squandered or wasted, its annual interest alone affords the means of enormous accumulation; while the rent of land, the profits of trade, and the wages of labour, are continually supplying new funds for further production and accumulation. The second point may be made clearer by an illustration. Let us suppose one hundred men, each saving 100*l.* annually out of their profits. Their aggregate accumulations would amount to 10,000*l.* But suppose one thousand men, with equal capitals, but unable, on account of a lower rate of profit, to save more than 50*l.* a year; their aggregate accumulations would amount to 50,000*l.* In both cases they would have maintained themselves and their families out of their profits, and have paid the wages of all the labour required in their business; after which their savings remain available for increased production, and for the employment of a larger quantity of labour. This example falls far short of the circumstances of Great Britain, for the number of small capitalists is even more extraordinary than the enormous capitals possessed by a comparatively small number of wealthy men; and their annual additions to the national capital are of incalculable amount.

The conclusions to which we are led by these inquiries, are—that a high rate of profit is favourable to accumulation; that rich and populous countries are denied this advantage; that if they enjoyed it, their capital would continue to increase more rapidly than it does, in fact, increase; but that, under ordinarily favourable circumstances, the masses of inherited capital and the aggregate savings of vast numbers of capitalists still facilitate accumulation in a greater ratio than the increase of population, which a high state of civilization has a tendency to check. [POPULATION.]

II. The consideration of the application and uses of capital will be disembarrassed of much complexity by explaining, at the outset, the distinction raised by political economists between what is called productive and unproductive labour and expenditure. The end of all production is use or consumption: some products are immediately destroyed by the use of them, as food or coals; others are consumed more slowly, but are ultimately destroyed by use, as clothes or furniture: but whatever is the durability of the thing produced, its sole use is the enjoyment of man. A man is rich or poor according to his power of obtaining the various sources of enjoyment which the skill and industry of others produce; and the aggregate of such permanent sources of enjoyment constitutes the wealth of nations. Whatever labour or expenditure, therefore, may be devoted to the increase or continuance of those sources of enjoyment, must be deemed productive: and labour and expenditure, which have no such tendency, must be viewed as unproductive.

The most scientific classification of productive and unproductive descriptions of labour and expenditure which we have met with is that of Mr. Mill. According to his definition the following are always productive:—When their "direct object or effect is the creation of some material product useful or agreeable to mankind," or "to endow human or other animated beings with faculties or qualities useful or agreeable to mankind, and possessing exchangeable value:" or "which, without having for their direct object the creation of any useful material product, or bodily or mental faculty or quality, yet tend indirectly to promote one or other of those ends, and are exerted or incurred solely for that purpose." Labour and expenditure are said to be unproductive when they are "directly or exclusively for the purpose of enjoyment, and not calling into existence anything, whether substance or quality, but such as begins and perishes in the enjoyment;" or when they are exerted or incurred "uselessly or in pure waste, and yielding neither direct enjoyment nor permanent sources of enjoyment." (*Essays on Unsettled Questions of Political Economy*, Essay III.)

Examples of these several classes would transgress our limits, but a study of the above definitions may serve to correct an erroneous impression, that no expenditure is productive unless it be incurred directly in aid of further production. The most common form in which this

error appears, is in a comparison of the ordinary expenditure of a gentleman living upon his income, with that of a person employing workmen in a productive trade. It is hastily assumed that the expenditure of the former is unproductive, but it is, in fact, of a mixed character. His servants, for instance, perform many labours of a productive character. His cook prepares food for his table, and thus adds the last process of a manufacture. In point of productiveness it is impossible to distinguish this necessary labour from that of a butcher or baker. His gardener is an agriculturist and directly productive. The upholsterer who makes his furniture is productive: and in what manner is the labour of his housemaid less productive, who keeps it fit for use? In the same manner, why is the labour of his butler less productive than that of the silversmith; or of his coachman than that of the coach-builder and the breeder of horses? All are engaged, alike, in increasing or continuing permanent sources of enjoyment. But the most important economical use of domestic servants is the division of labour which it creates. While they are engaged upon household services their employer is free to follow his own more important duties—the management of his estates, the investment of his capital, or the labours of his profession. It is not, therefore, in the employment of servants that expenditure is unproductively incurred, but in the employment of excessive numbers; for then they are used directly and exclusively for the purpose of an enjoyment "which begins and perishes in the enjoyment."

We will now briefly examine the nature of productive and unproductive consumption of perishable articles, and the effects of consumption, generally, upon production. Those who produce anything have one object only in devoting their labour to it—that of ultimately consuming the thing itself, or its equivalent, in the form of some other product of labour. If the exchange be made in goods, each consumer is obviously also a producer, and adds to the common stock of enjoyment as much as he withdraws from it. But money is the representative of the products of labour, and if given in exchange for them, the character of the transaction would appear to be the same as the direct interchange of the products themselves. In the case of productive labourers, it would be admitted to be precisely the same; but a distinction is taken when the labour of the consumer is itself unproductive. It is true that he offers the results of past labour, but his immediate end in consuming is enjoyment. He parts with his money, which is an equivalent to the seller, but he produces no new source of enjoyment for society. But the consumption of a productive labourer may also be unproductive. Such part of his consumption as is necessary to keep him in health, to render him perfectly fit, in mind and body, for his employment, and to rear his children suitably, is all clearly productive. If any residue remain, and he spend it upon immediate enjoyment—such as spirits, for example, which vanish with the enjoyment—that portion of his consumption is unproductive.

It must not be imagined, however, that the only result of money spent upon unproductive labour, or of unproductive consumption, is necessarily waste. The results of a man's labour may be unproductive to society, but a great part of his gains may be productively expended: and again, the maker and seller of commodities unproductively consumed are productive, and their profits may be productively applied. The distiller and the publican are productive labourers, but the consumption of spirits is itself unproductive.

We are now enabled to confine our attention to the uses of capital, as applied to its most important end, the employment and aid of productive industry. Its first and most important use is the division of employments, which, though necessary for any advance in arts, is impracticable without some previous accumulation of capital. Until there is a fund for employing labour, every man's business is the seeking of his own daily food; but as soon as the capital of another secures that for him, his labour is available for the general good. The more capital is accumulated, the more extended are the facilities for indefinite distribution

of employments, according to the wants of the community.

Capital may be applied either directly in the employment of labour, or directly in aid of labour: it may be spent in the food and clothes of labourers, or in tools and other auxiliary machinery, to assist their labour and increase its productiveness. The former is usually termed circulating capital, and the latter fixed capital. Both are equally essential to the progress of the arts and national wealth, and are used in combination; but the effects produced by each are not always the same. If a farmer employs three labourers, and his capital is afterwards doubled, it is a very important question whether he expend his increased stock in the payment of three additional labourers, or in providing auxiliary machinery to increase the power of the three labourers already employed. In the latter case we may be assured that his machinery will do the work of more than three men; for otherwise no ingenuity would have been applied to its contrivance. It is truly said by Professor Jones, that "when, instead of using their capital to support fresh labourers in any art, (a people) prefer expending an equal amount of capital in some shape in which it is assistant to the labour already employed in that art, we may conclude with perfect certainty, that the efficiency of human industry has increased relatively to the amount of capital employed." (*Distribution of Wealth*, p. 222.) The same able writer has pointed out another difference in the results of auxiliary capital, viz. "that when a given quantity of additional capital is applied, in the results of past labour, to assist the labourers actually employed, a less annual return will suffice to make the employment of such capital profitable, and therefore permanently practicable, than if the same quantity of fresh capital were expended in the support of additional labourers." (*Ibid.* p. 224.) This circumstance arises from the greater durability of the fixed capital, which may not require renewal for several years, while the direct expenditure on labour must be renewed annually. Thus 100*l.* spent in labour to cause a profit of 10 per cent. must produce results amounting in value to 110*l.*; but the same sum expended upon any machinery calculated to last for five years would be equally well repaid by a return of 30*l.* a year; being 10*l.* for profit upon the outlay, and 20*l.* for the annual wear and tear of the capital.

Not only does capital facilitate divisions of employment, and increase the productiveness of industry, by which the enjoyments of man are multiplied, but it actually produces many sources of power and enjoyment, which without it could have no existence. It is the foundation of all social progress and civilization, for without it man is but a savage. It must precede his mental culture, for until it exists his noble endowments are idle or misemployed. Without it, his mind is a slave to the wants of his body: with it, the strength of others becomes subservient to his will, and while he directs it to increase the physical enjoyments of his race, his intellect ranges beyond the common necessities of man, and aspires to wisdom—to government and laws—to arts and sciences. In all the nations of the world riches have preceded and introduced intellectual superiority. Connected with the progress of the human intellect, the printing press is an apt example of the creations, so to speak, effected by capital. No dexterity of fingers, no ingenuity of contrivance, unaided by the results of former labour, could multiply copies of books. Without abundance of types and frames and other appliances of the art, secured by capital, the bare invention of printing would be useless; and its wonderful efficacy, in the present age, may be ascribed as much to the resources of capital as to human ingenuity. In numberless other processes of art capital enables work to be executed which could not otherwise be performed at all, or enables it to be performed better and in less time. In all ways it multiplies indefinitely the varied sources of enjoyment that are offered to civilized man; but never more conspicuously than when it stimulates and encourages invention. Look at the railways of Great Britain. What created them? The abounding capital of the people, which, overflowing

the ordinary channels of investments, found a new channel for itself. In ten years the land was traversed by iron roads, and millions of people were borne along by steam with the speed of the wind.

This rapid sketch of the uses of capital will not be complete without its moral. The paramount value of capital to the prosperity of a nation should never be overlooked by a government. Unwise laws, restrictions upon commerce, improvident taxation, which are unfavourable to its growth, should be dreaded as poison to the sources of national wealth and happiness. No class is the better for its decay or retarded growth: all derive benefit from its increase. And above all, when population is rapidly increasing, let a government beware how it interferes with the natural growth of capital, lest the fund for the employment of labour should fail, and the numbers of the people, instead of being an instrument of national power, should become the unhappy cause of its decay. The material happiness of a people is greatest when the national wealth is increasing more rapidly than the population; when the demand for labour is ever in advance of the supply. It is then also that a people, being contented, are most easily governed; and that taxes are most productive and raised with least difficulty. But while the natural growth of capital should not be interfered with by restrictions, the opposite error of forcing it into particular channels should equally be avoided. Industry requires from government nothing but freedom for its exercise; and capital will then find its own way into the most productive employments; for its genius is more fertile than that of statesmen, and its energy is greatest when left to itself. The best means of aiding its spontaneous development are a liberal encouragement of science and the arts, and a judicious system of popular education and industrial training; for as "knowledge is power," so is it at once the best of all riches and the most efficient producer of wealth.

(Smith's *Wealth of Nations*, Book II. ch. 3, with Notes by M'Culloch and Wakefield; Ricardo *On Political Economy and Taxation;* M'Culloch, *Principles of Political Economy;* Professor Jones *On the Distribution of Wealth; Essays on some Unsettled Questions of Political Economy*, by John Stuart Mill.)

CAPTAIN (from the French *capitaine;* in Italian, *capitano:* both words are from the Latin *caput*, a head), in the naval service, is an officer who has the command of a ship of war, and, in the army, is one who commands a troop of cavalry or a company of infantry.

In military affairs the title of captain seems to have been originally applied, both in France and England, like that of General at present, to officers who were placed at the head of armies or of their principal divisions, or to the governors of fortified places. Père Daniel relates that it was at one time given to every military man of noble birth; and adds that, in the sense in which it is at present used, it originated when the French kings gave commission to certain nobles to raise companies of men, in proof of which he quotes an ordonnance of Charles V. This must have been before 1380, in which year that king died. In the English service the denomination of captain, in the same sense, appears to have been introduced about the reign of Henry VII., when it was borne by the officers commanding the yeomen of the guard, and the band of gentlemen pensioners. (Grose's *Military Antiquities*, vol. i.)

The established price of a captain's commission is, in the Life Guards, 3500*l.*; in the Dragoons, 3225*l.*; in the Foot Guards, with the rank of lieutenant-colonel, 4800*l.*; in the infantry of the line, 1800*l.*; and no officer can be promoted to the rank of captain until he has been two years an effective subaltern. The full pay of a captain in the Life and Foot Guards is 15*s.* per day; in the Dragoons 14*s.* 7*d.*; and in the Infantry of the Line is 11*s.* 7*d.* per day.

The duty of a captain is one of considerable importance, since that officer is responsible for the efficiency of his company in every qualification by which it is rendered fit for service; he has to attend all parades; to see that the clothing, arms, &c. of the men are in good

order, and that their pay and allowances are duly supplied. When the army is encamped, one captain of each regiment is appointed as captain for the day; his duty is to superintend the camp of his regiment, to attend the parading of the regimental guards, to visit the hospital, to cause the roll to be called frequently and at uncertain hours, and to report everything extraordinary to the commanding officer.

A high degree of responsibility rests upon the commander of a ship of war, since to him is committed the care of a numerous crew, with whom he has to encounter the dangers of the ocean and the chances of battle. And as the floating fortress with its costly artillery and stores, when transferred to the enemy, increases by so much his naval strength, it is evident that nothing but utter inability to prevent him from getting possession can justify the commander in surrendering. In the old French service the captain was prohibited from abandoning his ship under pain of death; and in action he was bound under the same penalty to defend it to the last extremity: he was even to blow it up rather than suffer it to fall into the enemy's power.

The pay of a captain in the navy varies with the rate of the ship, from 61*l.* 7*s.* per month for a first-rate, to 26*l.* 17*s.* for a sixth-rate. Commanders of sloops have 23*l.*, and a captain of marines 14*l.* 14*s.* per month.

From the book of general regulations and orders it appears that lieutenants of his majesty's ships rank with captains of the army. Commanders (by courtesy entitled captains) rank with majors. Captains (formerly designated post-captains) with lieutenant-colonels; but after three years from the dates of their commissions they rank with full colonels.

The rank of post-captain was that at which when the commander of a ship of war had arrived, his subsequent promotion to a *flag* took place only in consequence of seniority, as colonels of the army obtain promotion to the rank of general officers. Such captain was then said to be *posted;* but this title does not now exist.

Several petty-officers in a ship bear the titles of captains. Thus there is a captain of the forecastle, a captain of the hold, captains of the main and fore tops, of the mast, and of the afterguard.

CA'RDINAL (Italian, *Cardinale*), the highest dignity in the Roman church and court next to the pope. The cardinals are the electors of the pope, and his councillors. The Latin word Cardinalis is used by Vitruvius in his description of doors. The word is derived from the Latin *cardo*, a hinge. The word was applied by the Latin grammarians to the cardinal numbers as we now call them, *one, two*, and so on. We also speak of the cardinal virtues, and the cardinal points, North, East, South, and West. The term Cardo was applied by the Romans, in their system of land-measurement, to a meridian line drawn from south to north. (Hyginus, in Goesii *Agrimensores*, p. 150.) The Roman Cardinals, says Richelet, are so called, because they are the hinges or points which support the church (*Dictionnaire*).

In the early times of the church this title was given to the incumbents of the parishes of the city of Rome, and also of other great cities. There were also cardinal deacons, who had the charge of the hospitals for the poor, and who ranked above the other deacons. The cardinal priests of Rome attended the pope on solemn occasions. Leo IV., in the council of Rome, 853, styled them "presbyteros sui cardinis." Afterwards the title of cardinal was given also to the seven bishops suburbicarii, or suffragan of the pope, who took their title from places in the neighbourhood of Rome, namely, Ostia, Porto, Santa Rufina, Sabina, Palestrina, Albano, and Frascati. These bishops were called hebdomadarii, because they attended the pope for a week each in his turn. The cardinals took part with the rest of the Roman clergy in the election of the pope, who was often chosen from among their number. About the beginning of the twelfth century, the popes having organized a regular court, bestowed the rank of cardinal priest or deacon on any individual of the clergy or even laity that they thought proper, whether Roman or foreign, and gave to each the title of some particular church of

Rome, without any obligatory service being attached to it. Thus they made the cardinals a separate body elected for life; and the officiating priests of the Roman parishes were by degrees deprived of the title of cardinals. Nicholas II., in 1159, issued a decree, limiting the right of election exclusively to the cardinals thus appointed by the pope, leaving, however, to the rest of the clergy and the people of Rome the right of approving of the election of the new pope, and to the emperor that of confirming it. In course of time, however, both these last prerogatives became disused. Alexander III., in 1179, issued a decree, requiring the unanimous vote of two-thirds of the cardinals to make an election valid. For a long time the bishops in the great councils of the church continued to take precedence of the cardinals. In France, Louis XIII., in the sitting of the parliament of Paris of the 2nd of October, 1614, first adjudged to the cardinals the precedence over the ecclesiastical peers or bishops, and abbots. This precedence, however, has been often contested. Pius V., in 1567, forbade any clergyman to assume the title of cardinal except those appointed by the pope. Sixtus V., in December, 1586, fixed the number of cardinals at seventy, namely, the six bishops suburbicarii above mentioned (the title of Santa Rufina being joined to that of Porto, and that of Velletri to Ostia), fifty cardinal priests, and fourteen deacons; some of these last, however, having merely the minor orders. All the cardinals, both priests and deacons, bear the title of a church of the city of Rome. Several of the cardinal priests are bishops of some particular diocese at the same time; still they bear the title of the particular church of Rome under which they were made cardinals. The body of the cardinals is styled the Sacred College. The number of seventy is seldom complete, the pope generally leaving some vacancies for extraordinary cases. Most of the cardinals who reside at Rome either enjoy ecclesiastical benefices or are employed in the administration, either spiritual or temporal; others belong to wealthy families, and provide for their own support; and those who have not the same means receive an allowance from the Apostolic chamber or Papal treasury of one hundred dollars monthly. Several of the cardinals belong to monastic orders, some of whom even after their promotion, continue to reside in their respective convents. The establishment of a cardinal is generally respectable, but moderate: a carriage and livery-servants are however an obligatory part of it. They generally dress in a suit of black, in the garb of clergymen, but with red stockings, and a hat bordered with red. On public occasions their costume is splendid, consisting of a red tunic and mantle, a "rocchetto" or surplice of fine lace, and a red cap or a red three-cornered hat when going out. Members of religious orders, if created cardinals, continue to wear the colour of their monastic habit, and never use silk. When the pope promotes a foreign prelate to the rank of cardinal, he sends him a messenger with the cap: the hat can only be received from the pope's own hands; the only exception is in favour of members of royal houses, to whom the hat is sent. Urban VIII., in 1630, gave to the cardinals the title of Eminence, which was shared with them by the grand master of the order of Malta, and the ecclesiastical electors of the German or Roman Empire only. The pope often employs cardinals as his ambassadors to foreign courts, and the individual thus employed is styled Legate *a Latere*. A cardinal legate is the governor of one of the Northern provinces of the Papal States, which are known by the name of Legations. The chief secretary of state, the camerlengo, or minister of finances, the vicar of Rome, and other leading official persons, are chosen from among the cardinals.

The Council of Cardinals, when assembled under the presidency of the pope to discuss matters of church or state, is called "Consistorium." There are public consistories, held on some great occasions, which correspond to the levees of other sovereigns, and private or secret consistories, which are the privy council of the pope.

In Moreri's Dictionary, art. "Cardinal," is a list of all the cardinals elected from 1119 till 1724, their names, countries,

titles, and other dignities, the date of their election, and that of their death, which may be found useful for historical reference. (*Relazione della Corte di Roma, nuovamente corretta*, Rome, 1824; Richard et Giraud, *Bibliothèque Sacrée*, Paris, 1822, art. "Cardinaux.")

CARRIER, one who for hire undertakes the conveyance of goods or persons for any one who employs him. In a legal sense it extends not only to those who convey goods by land, but also to the owners and masters of ships, mail-contractors, and even to wharfingers who undertake to convey goods for hire from their wharfs to the vessel in their own lighters, but not to mere hackney coachmen. [HACKNEY-COACHES.] For the liability and duties of proprietors of stage-coaches carrying passengers see STAGE-COACHES.

Carriers of goods are subjected to a greater degree of responsibility than mere bailees for hire, and that responsibility is much more extensive than it is in the case of injuries to passengers. By ancient custom (which is part of the common law of this country), a common carrier of goods for hire is not only bound to take goods tendered to him, if he has room in his conveyance, and he is informed of their quality and value, but he is in the same situation as one who absolutely insures their safety, even against *inevitable accident;* he is therefore liable for their loss, though he be robbed of them by a force which he could not resist, on the principle that he might otherwise contrive purposely to be robbed of or to lose the goods, and himself to share the spoil. There are however three exceptions to this liability: 1, loss arising from the king's *public* enemies; 2, loss arising from the act of God, such as storm, lightning, or tempest; 3, loss arising from the owner's own fault, as by imperfect interior packing, which the carrier could not perceive or remedy.

As property of large value may be compressed into a small space and transmitted by carriers, they have in modern times endeavoured by notices to lessen the extensive charge that the common law cast upon them. The notice that they were in the habit of giving usually stated in substance that the carrier would not be responsible for goods above a certain value (generally 5*l.*), unless entered and paid for accordingly. After repeated discussions in courts of justice, on the effect of these notices, the carriers succeeded in establishing, that they would not be liable in the above circumstances, if they could *prove* explicitly, in each instance, full knowledge on the part of the person who sent the goods, or his agent, of this specific qualification of their general liability. But proof of this fact was in all cases most difficult to give, and to obviate this difficulty the statute 11 Geo. IV. and 1 Will. IV. c. 68, was passed, by which it is enacted that no common carrier by *land* shall be liable for the loss of, or injury to, certain articles, particularly enumerated in the act, contained in any package which shall have been delivered, either to be carried for hire, or to accompany a passenger, when the value of such article shall exceed the sum of 10*l.*, unless, at the time of the delivery of the package to the carrier, the value and nature of such article shall have been explicitly declared. In such case the carrier may demand an increased rate of charge, a table of which increased rates must be affixed in legible characters in some public and conspicuous part of the receiving office; and all persons who send goods are bound by such notice without further proof of the same having come to their knowledge.

The Carriers' Act applies only to carriers *by land*, and the liability of carriers by sea is the common liability before explained, slightly modified. [SHIPS.]

Upon the general principle that persons who, at the request of their owners, bestow money or labour on goods can detain them until those charges are paid, a carrier can refuse to deliver up goods, which have come into his possession *as a carrier*, until his reasonable charges for the carriage are paid. This in law is called a *particular lien*, in contradiction to a *general lien*. [LIEN.]

(Sir W. Jones on *Bailments;* Selwyn's *Nisi Prius*, title *Carrier;* and Chitty on *Contracts not under seal*, title *Carrier.*)

CASH CREDIT. [BANK, p. 278.]

CATHEDRAL. Certain churches are

called cathedrals or cathedral churches. They are so called in consequence of having a seat of dignity (*cathedra*, a Greek term for such a seat) appropriated to a bishop or archbishop. Thus there is the cathedral church of Canterbury, the cathedral church of Norwich, the cathedral church of Wells. The collegiate churches of Manchester and Ripon were constituted cathedral churches of the new sees of Manchester and Ripon by 6 & 7 Wm. IV. c. 77, the act under which these sees were created.

CATHOLIC CHURCH (Roman). Although in ordinary language this name is often used to designate the ruling authority or power in the Catholic religion, as if distinct from the members of that communion, yet the definition which Catholics give of the church is such as to comprehend the entire body of its members as well as its rulers, the flock as much as the shepherds. Thus we hear of Catholics being under the dominion of their church, or obliged to obey it, as though it were something distinct from themselves, or as if they were not a part of their church. This preliminary remark is made to explain a certain vagueness of expression, which often leads to misapprehension, and serves as the basis of incorrect ideas regarding the peculiar doctrines of that church. The Catholic church therefore is defined to be the community of the faithful united to their lawful pastors, in communion with the see of Rome, or with the pope, the successor of St. Peter and vicar of Christ on earth.

Simply developing the terms of this definition, we will give a brief sketch of the constitution or fundamental system of this church under the heads of its government, its laws, and its vital or constitutive principle.

I. The government of the Catholic church may be considered monarchical, inasmuch as the pope is the ruler over the entire church, and the most distant bishop of the Catholic church holds his appointment from him, and receives from him his authority. No bishop can be considered lawfully consecrated without his approbation. The dignity or office of pope is inherent in the occupant of the see of Rome, because the supremacy over the church is believed to be held in virtue of a commission given to St. Peter, not as his own personal prerogative, but as a part of the constitution of the church, for its advantage, and therefore intended to descend to his successors; as the episcopal power did from the apostles to those who succeeded them in their respective sees.

The election of the pope, therefore, devolves upon the clergy of Rome, as being their bishop; and it is confided to the college of cardinals, who, bearing the titles of the eldest churches in that city, represent its clergy, and form their chapter or electoral body. The meeting or chapter formed for this purpose alone is called a *conclave*. The cardinals are appointed by the pope, and compose the executive council of the church. They preside over the various departments of ecclesiastical government, and are divided into boards or congregations, as they are called, for the transaction of business from all parts of the world; but every decision is subject to the pope's revision, and has no value except from his approbation. On some occasions they are all summoned to meet the pope on affairs of higher importance, as for the nomination of bishops, or the admission of new members into their body; and then the assembly is called a *consistory*. The full number of cardinals is seventy, but there are always some hats left vacant.

The Catholic church, being essentially episcopal, is governed by bishops, who are of two sorts, bishops in ordinary, and vicars apostolic. By the first are meant titular bishops, or such as bear the name of the see over which they rule; as the Archbishop of Paris, or of Dublin; the Bishop of Cambray, or of New Orleans. The manner of appointing such bishops varies considerably. When they are unshackled by the government, the clergy of the diocese meet in chapter, according to old forms, and having selected three names, forward them to the Holy See, where one is chosen for promotion. This is the case in Ireland, Belgium, and perhaps in the free states of America. In most countries however the election of bishops is regulated by *concordat*, that is, a special agreement between the pope and

the civil government. The presentation is generally vested in the crown; but the appointment must proceed from the pope.

The powers of bishops, and the manner of exercising their authority, are regulated by the canon law; their jurisdiction on every point is clear and definite, and leaves no room for arbitrary enactments or oppressive measures. Yet it is of such a character as, generally considered, can perfectly control the inferior orders of clergy, and secure them to the discharge of their duty. In most Catholic countries there is a certain degree of civil jurisdiction allowed to the bishops, with judicial powers, in matters of a mixed character; as in cases appertaining to marriages, where a distinction between civil and ecclesiastical marriage has not been drawn by the legislature. Some offences connected with religion, as blasphemy or domestic immorality, are likewise brought under their cognizance.

Where the succession of the Catholic hierarchy has been interrupted, as in England, or never been established, the bishops who superintend the Catholic church and represent the papal authority are known by the name of *vicars apostolic*. A vicar apostolic is not necessarily a bishop—an instance of which we had a few years ago at Calcutta—where the vicar apostolic was a simple priest. Generally, however, he receives episcopal consecration; and, as from local circumstances, it is not thought expedient that he should bear the title of the see which he administers, he is appointed with the title of an ancient bishopric now in the hands of infidels, and thus is called a bishop *in partibus infidelium*, though the last word is often omitted in ordinary language. A vicar apostolic, being generally situated where the provisions of the canon law cannot be fully observed, is guided by particular instructions, by precedents and consuetude, to which all the uniformity of discipline through the Catholic church gives stability and security. Thus the vicars apostolic, who rule over the four episcopal districts of England, have their code in the admirable constitution of Pope Benedict XIV., beginning with the words *Apostolicum ministerium*. The powers of a vicar apostolic are necessarily more extended than those of ordinary bishops, and are ampler in proportion to the difficulty of keeping up a close communication with Rome. Thus many cases of dispensation in marriage which a continental bishop must send to the Holy See may be provided for by an English or American vicar apostolic; and other similar matters, for which these must consult it, could at once be granted by the ecclesiastical superiors of the Mauritius or of China. The nomination of vicars apostolic is solely with the pope.

The inferior clergy, considered in reference to the government of the church, consists mainly of the parochial clergy, or those who supply their place. In all countries possessing a hierarchy, the country is divided into parishes, each provided with a *parochus* or *curate*,* who corresponds to the rector or vicar of the English established church. The appointment to a parish is vested in the bishop, who has no power to remove again at will, or for any cause except a canonical offence juridically proved. The right of presentation by lay patrons is, however, in particular instances fully respected. In Italy the parish priests are generally chosen by competition: upon a vacancy, a day is appointed on which the testimonials of the different candidates are compared, and they are examined before the bishop in theology, the exposition of scripture, and extemporaneous preaching; and whoever is pronounced, by ballot, superior to the rest, is chosen.

Under an apostolic vicariate, the clergy corresponding to the parochial clergy generally bear the title of *apostolic missionaries*, and have *missions* or local districts with variable limits placed under their care; but are dependent upon the will of their ecclesiastical superiors.

Besides the parochial clergy, there is a considerable body of ecclesiastics, who do not enter directly into the governing

* The parish priest in Ireland corresponds to the curé in France, the curato (or, in the country, arciprete) of Italy, and the cura of Spain. The curate in Ireland, as in the church of England, is equivalent to the vicaire of France and the sotto-curato of Italy.

part of the church, although they help to discharge some of its most important functions. A great number of *secular* clergy are devoted to the conduct of education, either in universities or seminaries; many occupy themselves exclusively with the pulpit, others with instructing the poor, or attending charitable institutions. A certain number also fill prebends, or attend to the daily service of cathedrals, &c.; for in the Catholic church pluralities, where the cure of souls exists, are strictly prohibited, and consequently a distinct body of clergy from those engaged in parochial duties, or holding rectories, &c., is necessary for those duties. Besides this auxiliary force, the *regular* clergy, or monastic orders, take upon them many of these functions. The clergy of the Catholic church in the west are bound by a vow of celibacy, not formally made, but implied in their ordination as *sub-deacons*. This obligation of celibacy is only reckoned among the disciplinary enactments of the church. The clergy of that portion of the Greek and Armenian church which is united in communion with the see of Rome may be married; that is, may receive orders if married, but are not allowed to marry after having taken orders. A similar discipline, if thought expedient by the church, might be introduced into the West.

The only point concerning the government of the Catholic church which remains to be mentioned is the manner in which it is exercised. The most solemn tribunal is a *general council*, that is, an assembly of all the bishops of the church, who may attend either in person or by deputy, under the presidency of the pope or his legates. When once a decree has passed such an assembly, and received the approbation of the Holy See, there is no further appeal. Distinction must be, however, made between *doctrinal* and *disciplinary* decrees; for example, when in the Council of Trent it was decreed to be the doctrine of the church that marriage is indissoluble, this decree is considered binding in the belief and on the conduct, nor can its acceptance be refused by any one without his being considered rebellious to the church. But when it is ordered that marriages must be celebrated only in presence of the parish priest, this is a matter of discipline not supposed to rest on the revelation of God, but dictated by prudence; and consequently a degree of toleration is allowed regarding the adoption of the resolution in particular dioceses. It is only with regard to such decrees, and more specifically the one we have mentioned, that the Council of Trent is said to have been received, or not, in different countries.

When a general council cannot be summoned, or when it is not deemed necessary, the general government of the church is conducted by the pope, whose decisions in matters of discipline are considered paramount, though particular sees and countries claim certain special privileges and exemptions. In matters of faith it is admitted that if he issue a decree, as it is called, *ex cathedrâ*, or as head of the church, and all the bishops accept it, such a definition or decree is binding and final.*

The discipline or reformation of smaller divisions is performed by provincial or diocesan synods. The first consist of the bishops of a province under their metropolitan; the latter, of the parochial and other clergy under the superintendence of the bishop. The forms to be observed in such assemblies, the subjects which may be discussed, and the extent of jurisdiction which may be assumed, are laid down at full in a beautiful work of the learned Benedict XIV., entitled 'De Synodo Diœcesana.' The acts and decrees of many such partial synods have been published, and are held in high esteem among Catholics; indeed, they may be recommended as beautiful specimens of deliberative wisdom. Such are the decrees of the various synods held at Milan under the virtuous and amiable St. Charles Borromeo.

II. The *laws* of the Catholic church

* The great difference between the Transalpine and the Cisalpine divines, as they are termed, is whether such a decree has its force prior to, or independent of, the accession of the body of bishops to it, or receives its sanction and binding power from their acceptance. Practically there is little or no difference between the two opinions; yet this slight variety forms a principal groundwork of what are called the liberties of the Gallican church.

may be divided into two classes; those which bind the interior, and those which regulate outward conduct. This distinction, which corresponds to that above made between doctrinal and disciplinary decrees, may appear unusual, as the term *laws* seems hardly applicable to forms of thought or belief. Still, viewing the Catholic church under the form of an organized religious society, and considering that it professes to be divinely authorized to exact interior assent to all that it teaches, under the penalty of being separated from its communion, we think we can well classify under the word *law* those principles and doctrines which it commands and expects all its members to profess.

Catholics often complain that doctrines are laid to their charge which they do not hold, and in their various publications protest against their belief being assumed upon any except authoritative documents; and as such works are perfectly accessible, the complaint is reasonable and just. There are several works in which an accurate account is given of what Catholics are expected to believe, and which carefully distinguish between those points on which latitude of opinion is allowed, and such as have been fully and decisively decreed by the supreme authority of the church. Such are Veron's 'Regula Fidei,' or Rule of Faith, a work lately translated into English, and Halden's 'Analysis Fidei.' But there are documents of more authority than these; for example, the 'Declaration' set forth by the vicars apostolic or bishops in England, in 1823, often republished; and still more the 'Catechismus ad Parochos,' or 'Catechism of the Council of Trent,' translated into English not many years ago, and published in Dublin. A perusal of such works as these will satisfy those who are desirous of full and accurate information regarding Catholic tenets, of their real nature, and show that the popular expositions of their substance and character are generally incorrect.

The formulary of faith, which persons becoming members of the Catholic church are expected to recite, and which is sworn to upon taking any degree, or being appointed to a chair in a university, is the creed of Pius IV., of which the following is the substance:—

The preamble runs as follows: "I, N. N., with a firm faith believe and profess all and every one of those things which are contained in that creed which the holy Roman church maketh use of." Then follows the Nicene creed.

"I most steadfastly admit and embrace apostolical and ecclesiastical traditions, and all other observances and constitutions of the same church.

"I also admit the holy scriptures, according to that sense which our holy mother the church has held and does hold, to which it belongs to judge of the true sense and interpretation of the scriptures: neither will I ever take and interpret them otherwise than according to the unanimous consent of the fathers.

"I also profess that there are truly and properly seven sacraments of the new law, instituted by Jesus Christ our Lord, and necessary for the salvation of mankind, though not all for every one, to wit: baptism, confirmation, the eucharist, penance,* extreme unction, holy orders,† and matrimony: and that they confer grace; and that of these, baptism, confirmation, and orders cannot be reiterated without sacrilege. I also receive and admit the received and approved ceremonies of the Catholic Church, used in the solemn administration of the aforesaid sacraments.

"I embrace and receive all and every one of the things which have been defined and declared in the holy Council of Trent, concerning original sin and justification.

"I profess likewise that in the mass there is offered to God a true, proper, and propitiatory sacrifice for the living

* Under penance is included confession; as the Catholic sacrament of penance consists of three parts: contrition or sorrow, confession, and satisfaction.

† The clerical orders of the Catholic church are divided into two classes, *sacred* and *minor* orders. The first consists of subdeacons, deacons, and priests, who are bound to celibacy and the daily recitation of the *Breviary*, or collection of psalms and prayers, occupying a considerable time. The minor orders are four in number, and are preceded by the *tonsure*, an ecclesiastical ceremony in which the hair is shorn, initiatory to the ecclesiastical state.

and the dead: and that in the most holy sacrament of the eucharist there is truly, really, and substantially, the body and blood, together with the soul and divinity of our Lord Jesus Christ; and that there is made a change of the whole substance of the bread into the body, and of the whole substance of the wine into the blood, which change the Catholic church calls *transubstantiation.* I also confess that under either kind alone Christ is received whole and entire, and a true sacrament.

"I firmly hold that there is a *purgatory*, and that the souls therein detained are helped by the suffrages of the faithful.

"Likewise, that the saints reigning with Christ are to be honoured and invocated, and that they offer up prayers to God for us; and that their relics are to be had in veneration.

"I most firmly assert that the images of Christ, of the mother of God, and also of other saints, ought to be had and retained, and that due honour and veneration are to be given them.

"I also affirm that the power of indulgences was left by Christ in the church, and that the use of them is most wholesome to Christian people.

"I acknowledge the holy Catholic Apostolic Roman church for the mother and mistress of all churches: and I promise true obedience to the bishop of Rome, successor to St. Peter, prince of the apostles and vicar of Jesus Christ."

Then follow clauses condemnatory of all contrary doctrines, and expressive of adhesion to all the definitions of the Council of Trent.

It is obvious that this form of confession was framed in accordance to the decrees of that council, and consequently has chiefly in view the opinions of those who followed the Reformation.

Such is the doctrinal code of the Catholic church; of its moral doctrines we need not say anything, because no authorised document could be well referred to that embodies them all. There are many decrees of popes condemnatory of immoral opinions or propositions, but no positive decrees. The moral law, as taught in the Catholic church, is mainly the same as other denominations of Christians profess to follow.

Of the disciplanary or governing code we have already spoken, when we observed that it consisted of the Canon Law, which, unlike the doctrinal and moral code, may vary with time, place, and accidental circumstances.

III. The last head was the essential or constitutive principle of the Catholic church. By this we mean that principle which gives it individuality, distinguishes it from other religions, pervades all its institutions, and gives the answer to every query regarding the peculiar constitution, outward and inward, of this church.

Now, the fundamental position, the constitutive principle of the Catholic church, is the doctrine and belief that God has promised, and consequently bestows upon it, a constant and perpetual protection, to the extent of guaranteeing it from destruction, from error, or fatal corruption. This principle once admitted, every thing else follows. 1. The infallibility of the church in its decisions on matters concerning faith. 2. The obligation of submitting to all these decisions, independently of men's own private judgments or opinions. 3. The authority of tradition, or the unalterable character of all the doctrines committed to the church; and hence the persuasion that those of its dogmas, which to others appear strange and unscriptural, have been in reality handed down, uncorrupted, since the time of the apostles, who received them from Christ's teaching. 4. The necessity of religious unity, by perfect uniformity of belief: and thence as a corollary the sinfulness of wilful separation or schism, and culpable errors or heresy. 5. Government by authority, since they who are aided and supported by such a promise must necessarily be considered appointed to direct others, and are held as the representatives and vicegerents of Christ in the church. 6. The papal supremacy, whether considered as a necessary provision for the preservation of this essential unity, or as the principal depository of the divine promises. 7. In fine, the authority of councils, the right to enact canons and ceremonies, the duty of repressing all attempts to broach new opinions; in a word, all that system of rule and autho-

ritative teaching which must strike every one as the leading feature in the constitution of the Catholic church.

The differences, therefore, between this and other religions, however complicated and numerous they may at first sight appear, are thus narrowed to one question; for particular doctrines must share the fate of the dogmas above cited, as forming the constitutive principle of the Catholic religion. This religion claims for itself a complete consistency from its first principle to its last consequence, and to its least institution, and finds fault with others, as though they preserved forms, dignities, and doctrines which must have sprung from a principle by them rejected, but which are useless and mistaken the moment they are disjoined from it. Be this as it may, the constitution of the Catholic church should seem to possess, what is essential to every moral organized body, a principle of vitality which accounts for all its actions, and determines at once the direction and the intensity of all its functions.

We conclude this account of the Catholic church with a sketch of the extent of its dominions, by enumerating the countries which profess its doctrines, or which contain considerable communities under its obedience. In Europe, Italy, Spain, Portugal, France, Belgium, the Austrian empire, including Hungary, Bavaria, Poland, and the Rhenish provinces of Prussia, which formerly belonged to the ecclesiastical electorates, profess the Catholic religion as that of the state, or, according to the expression of the French *charte*, that of the majority of the people. In America, all the countries which once formed part of the Spanish dominions, both in the southern and northern portion of the continent, and which are now independent states, profess exclusively the same religion. The empire of Brazil is also Catholic. Lower Canada and all those islands in the West Indies which belong to Spain or France, including the Republic of Haiti, profess the Catholic faith; and there are also considerable Catholic communities in the United States of North America, especially in Maryland and Louisiana. Many Indian tribes, in the Canadas, in the United States, in California, and in South America, have embraced the same faith. In Asia there is hardly any nation professing Christianity which does not contain large communities of Catholic Christians. Thus in Syria the entire nation or tribe of the Maronites, dispersed over Mount Libanus, are subjects of the Roman see, governed by a patriarch and bishops appointed by it. There are also other Syriac Christians under other bishops, united to the same see, who are dispersed all over Palestine and Syria. At Constantinople there is a Catholic Armenian patriarch who governs the *united* Armenians as they are called, large communities of whom also exist in Armenia proper. The Abbé Dubois, in his examination before a committee of the House of Commons in 1832, stated the number of Catholics in the Indian peninsula at 600,000, including Ceylon, and this number was perhaps rather underrated than otherwise. There are at present an archbishop who is vicar apostolic of Bengal, bishops who are vicars apostolic of Madras, Bombay, and Ceylon respectively, and they are assisted by coadjutor bishops. [BISHOPRIC.] A new one has been added for Ceylon. We have not the means of ascertaining the number of Catholics in China, but in the province of Su-Chuen alone they were returned, 22nd September, 1824, at 47,487 (*Annales de la Propag. de la Foi*, No. XI. p. 257); and an official report published at Rome in the same year gives those in the provinces of Fo-kien and Kiansi at 40,000. There are seven other provinces containing a considerable number of Catholics, of which we have no return. In the united empire of Tonkin and Cochin-China the Catholics of one district were estimated at 200,000 (*Ibid*, No. X. p. 194), and, till the late persecution, there was a college with 200 students, and convents containing 700 religious. Another district gave a return, in 1826, of 2955 infants baptized, which would give an estimate of 88,000 adult Christians. A third gave a return of 170,000. M. Dubois estimates the number of native Catholics in the Philippine Islands at 2,000,000. In Africa, the islands of Mauritius and Bourbon are Catholic, and

all the Portuguese settlements on the coast, as well as the Azores, Madeira, the Cape Verd, and the Canary Islands.

CAUCUS, a word in use in the United States of North Ameria, which is applied to public meetings which are held for the purpose of agreeing upon candidates to be proposed for election to offices, or to concert measures for supporting a party, or any measure of a public or local nature; but its use is more generally confined to meetings of a political character. The word is to be found in nearly every American newspaper, and the 'American Cyclopædia' states that it is one of the very few 'Americanisms' which belong entirely to the United States. It is used in Gordon's 'History of the American Revolution,' published in London in 1788. Gordon says, that more than fifty years prior to the time of his writing, "Samuel Adams' father, and twenty others in Boston, one or two from the north end of the town, where all ship business is carried on, used to meet, make a caucus, &c." It has therefore been supposed that "caucus" was a corruption of "caulkers," the word meeting being understood.

CAVALRY (remotely from the Latin *caballus*, 'a horse') is that class of troops which serve on horseback. In the British army it consists of the two regiments of Life Guards, the royal regiment of Horse Guards, seven regiments of Dragoon Guards, and seventeen regiments of Light Dragoons, of which the 7th, 8th, 10th, 11th, and 15th are Hussars, and the 9th, 12th, 16th, and 17th are Lancers. A complete regiment of cavalry is divided into four squadrons, and each of these into two troops. The full strength of a troop is 80 men; and to each troop there is appointed a captain, a lieutenant, and a cornet.

The charge of the regimental establishments of the Life and Horse Guards in the year 1845, was—Life Guards, each regiment 29,803*l.*; Horse Guards, 26,295*l.* The number of rank and file in each of these regiments is 351; non-commissioned officers, trumpeters, and drummer 53; officers 32: total 436. The pay in the Life and Horse Guards is higher in every grade than for the cavalry of the line. Fourteen regiments of dragoons cost altogether 239,442*l.* One regiment of Dragoon Guards (the 1st) contains 479 of all ranks, and costs 22,264*l.* The cost of six regiments of Light Dragoons, each with 791 officers and men, in service in India, is defrayed by the East India Company, and amounts to 34,638*l.* per annum for each regiment. The cavalry in the pay of this country for 1844-5 was 7970 officers and men, out of a standing army of 99,707, exclusive of cavalry in India; or including the Queen's troops in India, the charge for cavalry for 1844-5 was—

808 Officers	£190,322
1059 Non-Commissioned Officers	44,382
9634 Rank and File	235,519
	£470,223

Dragoons are a species of light cavalry trained to act either on horseback or on foot as may be required. They appear to have been introduced into the English service before the middle of the seventeenth century; but the oldest regiment of dragoons in the army is that of the Scotch Greys, which was raised in 1681. Dragoons perform the duty of advanced guards and patroles; they escort convoys, and harass the enemy in his retreat; or, in reverses of fortune, they protect the dispersed and defeated infantry. The name Dragoon appears to come from the Latin Draconarius, the appellation given to a standard-bearer, who carried a standard or colour with the figure of a dragon on it. (Ammianus Marcell. xx. 4, and the notes in the edition of J. Gronovius; Vegetius, ii. 7.)

Hussars are also a species of light cavalry, which originally constituted the national militia of Poland and Hungary. They are usually employed to protect reconnoitring and foraging parties, and to serve as patroles.

The Lancers were introduced into the British service in order to correspond to the corps of what were called Polish Lancers in the French army. The long lance carried by this class of troops was supposed to be of use in a charge against infantry; and the fluttering of the flag at the extremity of the lance, by alarming the horse, to give an advantage over a dragoon otherwise armed.

In the late war a portion of the French cavalry was furnished with cuirasses, and, in imitation of them, the English Life Guards and Horse Guards have since borne the same heavy armour. These troops carry a sword, two pistols, and a carabine; the heavy cavalry in general carry carabines, pistols, and swords; and the light cavalry very small carabines, pistols, and sabres.

In the French budget for 1845-6, the estimate for the army was for 81,689 horses and 340,000 men. There are fifty-four regiments of cavalry, of five squadrons each, in the French service, besides four regiments (the African Chasseurs), each composed of six squadrons. The fifty-four regiments consist of—Carabiniers 2; Cuirassiers 10; Dragoons 12; Lancers 8; Chasseurs 13; and Hussars 9 regiments.

In the Austrian service the number of regiments of Cavalry of the line is 37: Cuirassiers 8; Dragoons 6; Light-horse 7; Hussars 12; Uhlans, 4.

The Russian cavalry in 1835 consisted of 86,800 men, besides 4000 Cossacks.

The Prussian cavalry in 1843 amounted to 19,960 men.

CEMETERY. [INTERMENT.]

CENSOR. [CENSUS, ROMAN.]

CENSORSHIP OF THE PRESS. [PRESS.]

CENSUS, THE, at Rome, was a numbering of the Roman people, and a valuation of their property. It was held in the Campus Martius, after the year B.C. 432. (Liv. iv. 22; Varro, *De R. R.* iii. 11.) Every Roman citizen was obliged, upon oath, to give in a statement of his own name and age, of the name and age of his wife, children, slaves, and freedmen, if he had any. The punishment for a false return was, that the individual's property should be confiscated, and he himself scourged and sold for a slave. Taxation depended on the results of the census; many kinds of property were excepted, while, on the other hand, some sorts of property were assessed at several times their value. Constant changes were made by successive censors in the valuation of taxable property. Cato and Flaccus rated the taxable value of high-priced slaves at ten times the purchase-money. (Niebuhr, ii. 402.) It appears from a passage in Livy (vi. 27) that the census also showed the amount of a man's debts and the names of his creditors.

According to the valuation of their property at the census, the citizens were divided into six classes; each class contained a number of centuries or hundreds. That a century did not always consist of a hundred men is clear, from the fact that the richest centuries were the most numerous, and consequently must individually have contained fewer persons than the centuries of the poor. (*Hist. of Rome*, by the Society for the Diffusion of Useful Knowledge, p. 21.) The first class consisted of those whose property amounted to 100,000 ases, about 322*l.* 18*s.* of English money: the second class consisted of persons worth 75,000 ases; the fortune of the third class amounted to 50,000 ases; that of the fourth to 25,000; that of the fifth to 11,000; and the sixth class included all below the fifth, even those who had no estate whatever. This was naturally the fullest of the six, but was accounted only as one century. Now, as the richer classes contained far more centuries than the poorer, so much so that the first class contained more than all the rest together, and as the votes in the Comitia Centuriata were taken within the centuries individually, and then the voice of the majority of centuries was decisive, it is obvious that the influence of wealth was greatly preponderant in this assembly. Cicero (*De Repub.* ii. 22) assigns this as the object aimed at in the institution. The real object of the Comitia Centuriata was (as Niebuhr supposes) to bind the different orders of the state together in one consistent and organised body. In the Comitia Centuriata the people always appeared under arms, and each class had a particular kind of armour assigned to it.

The census was held at first by the kings, afterwards by the consuls, and, from B.C. 442, by two magistrates called Censors (Censores), who were appointed every five years. After the census a sacrifice of purification was generally, but not always, offered. The victims were a sow, a sheep, and a bull, which were led thrice round the army, and then slain: the sacrifice was called Suovetaurilia.

It does not appear that the census was held with strict regularity. It was sometimes altogether omitted. (Cic. *Pro Arch.* 5. 11.) The usual interval was five years; and in allusion to the sacrifice of purification, the interval was commonly called a lustre (lustrum).

When a person was duly entered on the books of the censors, this was taken as a proof of his citizenship, even if he were a slave, provided he had been registered with his master's consent. (Cicero, *De Or.* i. 40; Ulpian, *Frag.* tit. i. 8; Gaius, i. 17.) As the census was held at Rome, citizens who were in the provinces, and wished to be registered, were obliged to repair there on that occasion (Cicero, *Ad Att.* i. 18, &c.); but this was sometimes evaded, and was made a matter of complaint by the censors. The census, accompanied with the ceremony of the lustrum, seems to have fallen into disuse after the time of Vespasian; but the numbering of the population, and the registration of property, continued under the empire.

The term *census* is also used in Latin authors to signify the amount of a person's estate, and hence we read of census equestris, the estate of an eques, and census senatorius, the estate of a senator.

The nature of the Roman census may be collected from various particulars. One object was to ascertain the number of men capable of bearing arms; and another, to ascertain the amount of each person's property, and the various heads of which it consisted. Cicero's treatise on Laws, though it contains a picture of an ideal republic, appears in one passage (iii. 3, 4) to describe what the Roman census was as it existed in his time. He says—"Let the censors take a census of the ages of the people, the children, the slaves, the property; let them look after the temples of the city, the roads, waters, treasury, the taxes; let them distribute into tribes the parts of which the people consist; then let them distribute the population according to property, ages, classes; let them register the children of the cavalry and the infantry; let them forbid celibacy; let them regulate the morals of the people; let them leave no infamous man in the senate; let there be two censors; let them hold their office for five years, and let the censorial authority be always continued. Let the censors faithfully guard the law; and let private persons bring to them their *acta*" (probably their vouchers or evidences). Thus the Romans must have had an immense mass of statistical documents, collected every five years, from which the population and the wealth of the community at each quinquennial period could be accurately known. Florus (i. 6) observes, "that by the great wisdom of King Servius the state was so ordered that all the differences of property, rank, age, occupations, and professions were registered, and thus a large state was administered with the same exactness as the smallest family." The Roman law fixed the age of legal capacity, and the ages at which a man could enjoy the various offices of the state. There must consequently have been a register of births under the republic; and a constitution of the emperor Marcus Antoninus, as to the registration of births for a special purpose, is recorded. (Jul. Capitolinus, *M. Antonin.* c. 9.)

In addition to this we have from the Codes of Theodosius and Justinian various particulars as to the census under the empire, and particularly from a valuable fragment of Ulpian, entitled 'De Censibus.' (*Dig.* 50, tit. 15, s. 2, 3, 4.) These authorities have preserved even the form of the registration under the Roman census. These registers showed the number, class, age, and property of all free persons, and also indicated the heads of families, mothers, sons, and daughters; they also comprised the slaves, male and female, with their occupations and the produce of their labour. They also contained all the lands, and indicated the mode in which they were cultivated; whether as vineyards, olive-yards, corn-land, pastures, forest, and so forth. They showed the number of acres (jugera), of vines, olives, and other trees. In fact, the Roman census under the empire was a complete register of the population and wealth of all the countries included within the limits of the Cæsar's dominions. These remarks are from Dureau de la Malle, 'Economie Politique des Romains,' who has given at the end of

one of his volumes the form of the registration tables.

CENSUS. Before the first enumeration of the people of this country, in 1801, the number of the population was a fruitful topic with party writers. By some it was contended that England was far less populous than it had been formerly. Arthur Young, writing in 1769, states (vol. iv. p. 556, 'Northern Tour') that these writers asserted we had lost a million and a half of people since the Revolution. Even so intelligent a writer as Dr. Price was of opinion that in 1780 England and Wales contained no more than 4,763,000 souls. The increase of manufactures, and the greater abundance of employment, which had of course the effect of raising wages, might also be regarded from another, though a one-sided point of view, as the result of the decline of population. It was in vain to tell such persons that all the circumstances of the country were favourable to the increase of population; and that while agriculture was improving, manufactures and commerce rapidly extending, wages higher, and provisions continued at a reasonable price, it was not in the nature of things that population should even continue stationary, but that it would be most likely to increase with great rapidity. It is now known that the population of England increased upwards of two millions and a quarter between 1750 and the end of the century; but it was not until a census was actually taken that an end was put to the disputes as to the amount of the population.

Having once obtained an enumeration of the people, it has been possible to apply the facts to antecedent periods, in order to form an approximative estimate of the amount of population. This task was undertaken by the late Mr. Rickman, who, in 1836, addressed a circular letter to the clergy throughout England and Wales, asking for their assistance in preparing returns from the parish registers of the births, marriages, and deaths at different periods. Out of about ten thousand parishes in England, one-half possess registers which were commenced prior to 1600, and of these, three-fourths commence as early as the year 1570. From these registers Mr. Rickman was supplied with the number of births, marriages, and deaths for six periods, each embracing three consecutive years, from which he calculated the average population of each period. It was then assumed that the births, marriages, and deaths were in the same proportion to the population of each period as in 1801. The result of Mr. Rickman's estimate, according to his mode of calculation, showed that the population of England and Wales in each of the following years was as under:—

	England.	Wales.
1570	3,737,841	301,038
1600	4,460,454	351,264
1630	5,225,263	375,254
1670	5,395,185	378,461
1700	5,653,061	391,947
1750	6,066,041	450,994

1. *Census of* 1801.—The first census of Great Britain was limited to the following objects: 1, The number of individual inhabitants in each parish, distinguishing males from females; 2, The number of inhabited houses, and the number of families inhabiting the same in each parish; 3, The number of uninhabited houses; 4, A classification of the employment of individuals into the great divisions of agriculture, trade, manufactures and handicraft, and a specification of the numbers not included in either of those divisions; 5, The number of persons serving in the regular army, the militia, and the embodied local militia. The inquiry under the fourth head entirely failed, through "the impossibility," as Mr. Rickman states, "of deciding whether the females of the family, children, and servants, were to be classed as of no occupation, or of the occupation of the adult males of the family. (*Statement of Progress under Pop. Act of* 1830.) The results of the census were, however, very valuable in putting an end to doubts and controversy on the subject of the numbers of the people.

2. *Census of* 1811.—The second census embraced all the points which were the subject of inquiry in 1801; but the question respecting the number of houses was subdivided, so as to distinguish the number of houses building, which, in the

first census, were classed under the head of uninhabited houses. With a view also of obtaining a more accurate return of the occupations of the people, the form of inquiry under this head was modified so as to ascertain, 1st, What number of *families* (not persons, as in 1801) were chiefly employed in or maintained by agriculture; 2nd, How many by trade, manufactures, and handicraft; and, 3rd, The number of families not comprised in either class.

3. *Census of* 1821.—The heads of inquiry were the same as in 1811, with an additional head respecting the ages of the population. For the first time it was attempted to ascertain the age of every person, distinguishing males from females. The first head included persons under the age of five; and the quinquennial period was adopted for all persons not exceeding 20, after which the ages were classified in decennial periods; and there was a head which comprised all persons aged 100 and upwards. The ages of 92 out of every 100 persons were thus ascertained.

4. *Census of* 1831.—The new features in this census were an alteration in the form of inquiry respecting occupations. In 1801 the attempt to ascertain the occupation of every individual was, as already stated, a failure; and the inquiry in 1811 and 1821 had reference only to the heads of families; but this form was altered, in consequence, as Mr. Rickman states, of "the often recurring and unanswerable doubt as to what is to be deemed a family." The returns to the questions, as modified under the census of 1831, showed, as in 1811 and 1821, the number of families employed in, 1, Agriculture; 2, In trade, manufacture, and handicrafts; and 3, The number of families not comprised in either class; but they also showed, in addition to the information procured at any former period, the number of *persons* (males aged twenty years and upwards) employed in, 1, Manufacture or in making manufacturing machinery; 2, Retail trade or handicraft, as masters or workmen; 3, The number of capitalists, bankers, and other educated men; 4, Labourers employed in non-agricultural labour; 5, Other males aged twenty years and upwards (not including servants); 6, Male servants aged twenty and upwards; and also male servants under twenty. The number of female servants was also returned under a separate head. The returns also showed, in reference to the occupation and cultivation of the land, the number of—1, Occupiers employing labourers; 2, Occupiers not employing labourers; 3, Labourers. The inquiry respecting age, which had on the whole been so successful in 1821, was abandoned, except in so far as it went to ascertain the number of males aged twenty years and upwards, on the ground that it imposed "too much labour in combination with the other inquiries," and that, for so short an interval as ten years, the information was "unnecessary and inconclusive." With regard to males aged twenty and upwards employed in trade, manufactures, and handicrafts, an attempt was made to show the number employed in different branches of these employments. The following was the plan adopted for this purpose:—A form, containing a list of one hundred different trades and handicrafts, comprising those most commonly carried on, was furnished to the overseers in each parish or place required to make a separate return, to be filled up with the number of males aged twenty and upwards; and the overseers were authorized to add to the list such additional trades as were not included in the printed form. The absence of uniformity in describing occupations not inserted in the official formula, and the difficulty of testing the accuracy of that part of the classification which was left to the discretion of the overseers, were the principal defects of this plan. The number of distinct occupations returned in the census was 598.

The censuses of 1801, 1811, 1821, and 1831 were each superintended by the late Mr. Rickman, clerk assistant of the House of Commons, and the business of enumeration was conducted by the overseers of the poor in England and Wales, and by the parochial schoolmasters in Scotland.

Census of 1841.—This is far more complete and comprehensive than any preceding census. The heads of inquiry

were more numerous and more minute, while the results obtained are more accurate. In consequence of the death of Mr. Rickman, two census commissioners (Edward Phipps and Thomas Vardon, Esqrs.) were appointed, and the officers of the registrar-general of births, marriages, and deaths were employed as enumerators, instead of the less intelligent parochial overseers. England and Wales were divided into about 35,000 enumeration districts, each containing not less than twenty-five nor more than two hundred houses, so that each district might be completed in a single day. Public institutions, barracks, gaols, workhouses, &c. were required under the Census Acts, 3 & 4 Vict. c. 99, and 4 Vict. c. 7, to be enumerated by the several officers residing therein. Two very important improvements were made as to the inquiry respecting ages and occupations. Instead of quinquennial and decennial periods being taken, as in 1821, or only the age of males aged twenty and upwards, as in 1831, the exact age of every person was ascertained. In reference to occupations, the enumerators were directed to ascertain the employment of *every* person, distinguishing sex, and whether above or under twenty years of age. A new head of inquiry was also introduced for the purpose of showing the number of persons born in the county in which they resided; the number born in other counties of the same country; and the number born in Scotland (for Scotland the number born in England), Ireland, the colonies, and in foreign parts.

The number of parishes which made a return of all the above particulars was 9942 for England, and 838 for Wales. In the volumes of Abstracts of the Population Returns the population is given separately for 17,476 parishes and other divisions in England, and 1984 in Wales; and for Great Britain the population is separately stated for 22,303 parishes, towns, hamlets, &c., which is 5601 more than under the census of 1831. The analysis of this immense body of facts was very admirably arranged under the superindendence of the census commissioners.

An examination into the results of the census of 1841 is treated of under a separate head. [CENSUS of 1841.] The following is a comparative summary of each census from 1801 to 1841 inclusive:—

	1801.	1811.	1821.	1831.	1841.
England	8,331,434	9,538,827	11,261,437	13,091,005	14,995,508
Wales	541,546	611,788	717,438	806,182	911,321
Persons travelling at night, June 6	..	..	..	..	4,896
England and Wales	8,872,980	10,150,615	11,978,875	13,897,187	15,911,725
Scotland	1,599,068	1,805,688	2,093,456	2,365,114	2,628,957
Islands in the British Seas	..	..	89,508	103,710	124,079
Total Great Britain	..	..	14,161,839	16,366,011	18,664,761
Ireland	..	..	6,801,827	7,767,401	8,175,124
Total United Kingdom	..	..	20,963,666	24,133,412	26,839,885

The first census of Ireland was taken in 1813, but in a very imperfect and incomplete manner. Six counties and the cities of Limerick and Kilkenny were omitted altogether. In 1821, and again in 1831, a census was taken in a manner which afforded no ground of complaint. The inquiry respecting age in 1821 was more successful than in Great Britain, where it was defective in respect of 8000 in every 100,000, while in Ireland the defect was only 126 in each 100,000. The preface to the Abstracts of the Census Returns of 1841 is a very elaborate disquisition on the results which the returns present, and it embraces a comprehensive view of the social condition of the country. [CENSUS OF 1841.]

Amongst the defects of the census of Great Britain and Ireland may be men-

tioned the absence of information concerning the number of persons belonging to each religious denomination.

In 1834 a specific census was taken in Ireland with a view of ascertaining for purposes of legislation the religious persuasion of the people. This inquiry was not repeated at the last census, and it has never found a place in the census of either England or Scotland.

In the Colonial possessions of Great Britain a census is taken at intervals, under acts of the local legislature or under the direction of the governor. In some cases the ages of the population are ascertained; in others the religious persuasion; and in many the value and amount of stock and produce are returned.

In France there have been six enumerations of the people during the present century: in 1801, 1806, 1821, 1826, 1831, 1836, and 1841. The census is now taken every five years. In the census of 1801 the sexes were distinguished, and those in each sex who were or had been married, and those who were single. In 1806, widowers and widows were also distinguished. The census of 1826 was simply an enumeration without distinction of age or sex; but in 1836, and at each subsequent census, the inquiry was pursued in the same form as in 1821.

In Belgium the census distinguishes the town and country population, sexes and ages, the number of single and married persons, and widowers and widows. The occupations of the people are also shown, divided into two classes, liberal and industrial. The first includes seven subdivisions, and the second twelve subdivisions. The number of persons belonging to each religious profession is also given.

In Holland the census is taken on the 1st of January in each year.

In Saxony the census embraces inquiries as to sexes, age, number of families, number unmarried and married, widowers and widows, religious profession, and the number of the blind, deaf and dumb.

In Prussia the census is taken every three years. The ages of males and females are given in five classes, and in this respect the census is less minute than might have been expected. The numbers belonging to each religious denomination are also given.

Sweden has long been remarkable for the minute and even ultra-inquisitorial character of its census. A board called the "Table Commission" was organised in 1749 for collecting and digesting accurate statistics of the population, which are supplied by the clergy. The Swedish census exhibits the circumstances of all the households, arranged in three classes: 1st, the number who have more than they require for subsistence, or are in good circumstances; 2nd, the number who can support themselves; and 3rd, those who are in bad circumstances, or have less than they want for subsistence. The number of the poor and by whom they are supported is accurately ascertained. Censuses are also taken by the civil officers for the purposes of taxation, but they are not so exact as the enumeration by the clergy. It is said, indeed, that during the progress of the civil census the poor labourers, especially in the towns, contrive to go away or conceal themselves.

In Norway the census is taken by the magistrates in towns, and in the country by the rectors of parishes. The inquiries extend to the number of cattle and the production of grain. Temporary absentees are returned in the family to which they belong, and as casual strangers and visitors are not returned, the census comprises those only who have house and home in the country. The number of idiotic and of deaf and dumb persons is distinguished. Under the head of occupations, persons having more businesses than one are returned under each. A general census has been five times taken in Norway: in 1769, 1801, 1815, 1825, and in 1835; and as the census is taken decennially, there will be one in 1845.

In Denmark the census is both varied and minute, and in the information which it gives it does not differ much from the Swedish census.

The census of Sardinia, made in 1838, is said to be as complete in its objects and method as any in Europe. It was executed under the superintendence of a

Central Statistical Commission, assisted by local committees for the several provinces, consisting each of five members, besides the "Intendente" of the province, who acted as its president. The system of enumeration by *names* was adopted, and the returns showed, for each person in a population of 4,650,370 souls, the name and surname; age; civil condition, whether single, married, or widowed; place of birth, whether in the province in which they resided, or subjects born in some other province; residents who were foreign subjects; occupation; and religious profession.

In Austria the census is taken every year, but neither sex nor occupations are distinguished; but this defect is partially remedied by the very accurate registry which is kept of the births, marriages, and deaths.

In the vast empire of Russia a census of the population is taken, but we are unable to state at what intervals; and there is a registration of births, marriages, and deaths.

In Portugal a census was taken in 1841. In Spain a census has been taken at irregular periods; but at present the number of the population is only conjectured.

There is not at the present time a single European state (Turkey excepted) in which a census of the population is not taken with more or less minuteness; and this is accompanied, with few exceptions (amongst which are Scotland and Ireland), by a more or less perfect system of registering every birth, marriage, and death. [REGISTRATION OF BIRTHS, DEATHS, AND MARRIAGES.] In addition to these means of information respecting the population, there are in most states returns respecting property, which further illustrate the condition of the people. [STATISTICS.]

In the United States of North America the representative system is based on numbers, and whenever direct taxation is resorted to, it is apportioned on the same principle. A census is therefore indispensable; and provision was made respecting it by the constitution of the United States. There are other reasons which render a census of peculiar importance. Professor Tucker, of the university of Virginia, remarks:—"Our changes are both greater and more rapid than those of any other country. A region covered with its primeval forests is, in the course of one generation, covered with productive farms and comfortable dwellings, and in the same brief space villages are seen to shoot up into wealthy and populous cities. The elements of our population are, moreover, composed of different races and conditions of civil freedom, whose relative increase is watched with interest by every reflecting man, however he may view that diversity of condition, or whatever he may think of the comparative merit of the two races." The first census was taken in 1790, and referred to the 1st of August of that year; the second in 1800, and subsequently in every tenth year. In 1830 the period of enumeration was changed to the 1st of June, so that the preceding decennium was two months short of ten years. The last census was taken on the 1st of June, 1840.

In the first census of the United States the heads of inquiry were five, and the numbers were ascertained of—1, Free white males, aged sixteen and upwards. 2, The same under sixteen. 3, Free white females of all ages. 4, Slaves. 5, Free persons of colour, for the phrase "all other persons" could comprise only them. In the second census the ages of the white population were ascertained and distributed under five heads, showing the number under 10; between 10 and 16; 16 and 26; 26 and 45; and 45 and upwards. The census of 1810 was taken in the same manner as that of 1800. In the succeeding census, in 1820, free coloured persons and slaves were for the first time classified as to age and sex, and they were distributed in four divisions of ages. A column was added for white males aged between 16 and 18. The population was also classified as to occupations in the three great divisions of agriculture, commerce, and manufactures. In 1830 the population was distinguished with greater minuteness as to age. The white population under 20 was classed into quinquennial periods, and from 20 and upwards into decennial periods. The free coloured persons and

slaves were classed, in respect to age, in six divisions. The number of persons blind, and deaf and dumb, were ascertained in each class of the population, and their ages distinguished. No notice was taken in the census of 1830 of the occupations of the people. The census of 1840, on the contrary, is remarkable for its attempt to supply minute details of every branch of industry in the United States, but in other respects the heads of inquiry were the same as in 1830. Not only were the people classified according to their occupations, but estimates were obtained relative to the annual products of industry, under the six heads of—Mines, with nine subdivisions; Agriculture, with twenty-nine; Commerce, with five; Fisheries, with five; the Forest, with five; Manufactures, with forty-six subdivisions. It appears, however, from the 'American Almanac' (Boston, 1845) that the statistical details of productive industry are not so correct as could be wished. Professor Tucker, however, is of opinion that the errors so balance and compensate each other, as to afford on the whole "an approximation to the truth, which is all that the subject admits of." (*Progress of the United States in Population and Wealth in Fifty Years, as exhibited by the Decennial Census.* By George Tucker, Prof. of Moral Philosophy and Political Economy in the University of Virginia, Boston, 1843. This is a valuable and useful work, and it is to be regretted that no writer of this country has undertaken a similar task for the five censuses of Great Britain, the results of which are only to be found in the cumbrous volumes of Parliamentary Returns which give the details of each census.)

CENSUS OF 1841. In June, 1841, was taken the decennial census of Great Britain and Ireland, the results of which, when compared with other statistical returns, afford the means of examining the condition and prospects of the country. It is not proposed, in this article, to enter with any minuteness either upon the manner in which the census was taken, or upon the detailed results appearing in the reports of the commissioners; but it is intended to present a comparison of the increase and distribution of the population, with their means of employment, their command of the necessaries and conveniences of life, the growth of capital, the extension of trade and manufactures, and with other indications of the progress of society. If it shall appear that in all these respects the means of enjoyment have increased more rapidly than the population, this review of the national resources will be most encouraging; and may be more generally acceptable than a tedious examination of the specific results of the census itself. As the selection of the various subjects of comparison will be made without reference to any preconceived theory, the accuracy of the facts may be relied on: and it is hoped that no conclusions will be drawn from them which they do not fairly justify.

In several particulars, it will be necessary to advert to Great Britain and to Ireland separately; but it will be convenient, in the first place, to present a summary of the population of the United Kingdom in 1831 and in 1841, with calculations of the rate of increase per cent.

	1831.	1841.	Increase per cent.
England . .	13,091,005	14,995,138	14·5
Wales . . .	806,182	911,603	13
Scotland . .	2,365,114	2,620,184	10·7
Army, navy, and registered seamen afloat .	277,017	188,453	
Persons travelling on the night of June 6	..	5,016	
Islands in the British Seas.	103,107	124,040	19·6
GREAT BRITAIN .	16,643,028	18,844,434	13·2
IRELAND . . .	7,767,401	8,175,124	5·25
United Kingdom .	24,410,429	27,019,558	10·6

The Irish census commissioners (Report, p. xi.) enter into certain calculations, by which they raise the per centage of increase in the population of Ireland from 5·25, as actually shown in the returns, to nearly 12 per cent. If the same principles of calculation were applied to the population of Great Britain, the increase would also be greater; but it will be sufficient, for the purposes of this inquiry, if the entire population of the United King-

dom, during the ten years from 1831 to 1841, be assumed to have increased 12 per cent.

In judging of the condition of the people, the first point which may be investigated is their consumption of those articles which are used more or less in proportion to their means. Unhappily there are no means of estimating the quantities of bread and meat or other staples of food produced in this country; but the quantities of auxiliary articles of food and luxury imported from abroad for home consumption, or manufactured in this country, are fair indications of the means possessed by the people of enjoying the comforts of life. If the increase in the consumption of such articles be in a greater proportion than the increase of population, it may reasonably be inferred that their means of enjoyment have generally increased; or, in other words, that the people enjoyed more comforts in 1841 than in 1831, relatively to their numbers.

The quantities of several articles which paid duty for home consumption in the United Kingdom, in 1831 and 1841 respectively, and the rate of increase, will appear from the following table:—

	1831.	1841.	Rate per cent. of increase.
Butter . . cwts.	121,193	251,255	106·4
Cheese . . ,,	130,039	248,335	90·9
Cocoa . . ,,	502,806	1,930,764	283·9
Coffee . . lbs.	22,715,807	28,420,980	25·1
Tea . . . ,,	29,997,055	36,396,078	21·3
Rice . . . cwts.	140,100	245,887	75·5
Eggs . . No.	58,464,690	91,880,187	57·1
Tallow . . cwts.	918,733	1,243,112	35·3
Soap (hard) lbs.	108,956,030	156,008,290	43·1
Tobacco . ,,	19,333,840	22,308,385	14·2
Crown-glass. cwt	103,803	116,895	12·6
Plate-glass . ,,	14,019	27,639	97·1
Green or bottle glass . . cwts.	288,760	499,581	73·0
Paper . . lbs.	62,738,000	97,103,548	54·7

This list might be extended much further; but it will suffice to show that the consumption of these articles (restrained in some cases by too heavy a taxation) was enjoyed in a larger ratio than the increase of population, and that the comforts of the people must have been proportionately greater in 1841 than in 1831.

Concurrently with this increased consumption of articles of comfort and luxury, it is worthy of special notice that the use of intoxicating drinks had apparently decreased. We are not aware of any causes which encouraged the smuggling or adulteration of spirits in 1841 which did not exist in 1831; and yet it appears, from the returns, that the consumption of duty-paid spirits of all kinds, whether British or foreign, had decreased in that interval to the extent of 7·8 per cent. In the same period the consumption of all wines had increased only 3·9 per cent. The consumption of beer cannot be ascertained, but the quantity of hops that paid duty had fallen from 36,500,028 lbs. in 1831, to 30,504,108, or 19·6 per cent.; and of malt, from 40,334,987 bushels to 35,656,713, or 13·1 per cent. From these facts, however, no certain inference can be drawn, on account of the great varieties in the natural produce of these articles in different years, and of the free use of other ingredients by brewers.

Our view of the evidences of increased consumption may be closed by the notice of the three articles of timber, cotton-wool, and wool, all of which are used solely in giving employment to productive industry. Taking all the different kinds of imported timber, there appears to have been an increase of 37·5 per cent. In cotton-wool there was an increase of 61·1 per cent.; and in sheep and lambs' wool imported, of 78·7 per cent.

The next subject of comparison may be the exports of British and Irish produce and manufactures from the United Kingdom, in 1831 and in 1841, from which the manufacturing and commercial condition of the country, and the employment of its people, at those periods, may be collected.

The quantities and declared value of some of the principal articles of export are exhibited in the table in the following page:—

On referring to the two last columns of this table, it appears that the value of the exports did not always increase in the same ratio as the quantities; but the total declared value of all British and Irish produce and manufactures exported in 1831 was 37,164,372*l.*; in 1841,

	1831.		1841.		Increase per cent.	
	Quantities.	Declared value.	Quantities.	Declared value.	In the quantity	In the declared value.
		£.		£.		
Apparel	—	790,293	—	1,217,975	—	54·1
Brass and Copper manufactures ... cwts.	181,951	803,124	327,247	1,523,744	79·8	89·7
Cordage ... ,,	36,276	81,986	63,822	130,414	75·9	71·2
Cotton manufactures ... yds.	421,385,303	12,163,513	751,125,624	14,985,810	78·2	23·2
Cotton twist and yarn .. lbs.	63,821,440	3,975,019	123,226,519	7,266,986	93·0	82·8
Earthenware ... pieces	37,028,897	461,090	53,150,903	600,759	43·5	30·3
Glass (entered by weight)	177,915	420,044	338,890	409,168	90·4	—
— (entered at value)	—	9,580	—	21,768	—	127·2
Hardwares and cutlery cwts.	336,194	1,622,429	353,348	1,623,961	5·1	0·09
Iron and steel (wrought or unwrought) ... tons.	124,312	1,123,372	360,875	2,877,278	174·2	156·1
Leather ... lbs.	1,314,931	246,410	2,623,075	332,573	99·4	34·9
Linen manufactures ... yds.	69,233,892	2,400,043	90,321,761	3,200,467	30·4	33·3
— thread, tapes, &c. ,,		61,661		147,088	—	138·5
— yarn ... lbs.	110,188	8,705	25,220,290	972,466	22788·4	11071·3
Machinery and mill-work	—	105,491	—	551,361	—	422·6
Silk manufactures	—	578,874	—	788,894	—	36·2
Tin and pewter wares	—	230,143	—	390,621	—	69·7
Wool, British ... lbs.	3,494,275	173,105	8,471,235	555,620	142·4	220·9
Woollen and worsted yarn ,,	1,592,455	158,111	4,903,291	552,148	207·9	249·2
— manufactures, pieces	1,997,348	4,580,902	2,291,273	4,821,820	14·7	5·2
— yards.	5,797,546	500,956	9,831,975	698,462	69·5	39·4
— hosiery, &c.	—	150,555	—	228,391	—	51·7

51,634,623*l.*; thus showing an aggregate increase of 38·9 per cent.

Another evidence of the increased commerce of the country is afforded by the returns of shipping. In 1831, 20,573 ships (British and foreign) engaged in the foreign and colonial trades, entered inwards; of which the total tonnage amounted to 3,241,927. In 1841 the number of ships had increased to 28,052, and the tonnage to 4,652,376; thus showing an increase of tonnage in the proportion of 43·5 per cent. In 1832, 119,283 ships were employed (including their repeated voyages) in the coasting trade, of which the tonnage amounted to 9,419,681. In 1841 the number of ships had increased to 146,127, and the tonnage to 11,417,991, showing an increase of 21·2 per cent. in the tonnage employed.

Thus far an increased prosperity can admit of no doubt. It is evident that consumption, production, and commerce all increased in a greater ratio than the population. But it may here be asserted that profits were low, and that, notwithstanding the outward signs of prosperity, the capital, available for further enterprises, was not increasing with corresponding rapidity. The evidences of accumulation cannot be of so distinct a character as those of consumption and production; but it may be asked, in the outset, how could so vast an increase in the productive industry of the country, in the value of its exports, in its shipping and commerce, have been supported without prodigious additions to its capital? The best evidence of the quantity of capital in a country is its results. Without a sufficient quantity, production and consumption could not continue to increase: and as capital is likely to be applied to production and consumption as much at one period as at another, all that seems necessary for ascertaining the increase of capital, is to know the increase of its immediate results. If, in addition to the vast increase of production and consumption which could only have been supported by a proportionate amount of capital, we see the price of all public securities high, the interest of money low, and capital seeking investment in every specu-

lative enterprise, and devoted to religious and charitable objects over the whole world, it is absurd to doubt the abundance of capital. But in addition to this indirect evidence of the increase of capital, there are other indications of its accumulation, of a more direct nature, a few of which may suffice:—

Notwithstanding the discouragement of insurance, caused by a duty of 200 per cent., the sums insured against fire, in the United Kingdom, amounted in 1831 to 526,655,332*l.*, and in 1841 to 681,539,839*l.*; being an increase of 29·4 per cent. The accumulations annually made through the instrumentality of life assurance are known to be enormous, but no reasonable estimate can be made of their amount, nor any comparison of the rate of increase in the period of which we are treating. The most interesting evidence of accumulation is presented by the returns of savings' banks. In 1831 there were 429,503 depositors, whose deposits amounted to 13,719,495*l.*: in 1841 there were 841,204 depositors, and the amount of their deposits had increased to 24,474,689*l.*; so that, both in number and amount, the deposits may be said to have been doubled in this short period of ten years. The capital invested in railways in the same period may safely be estimated at upwards of 60,000,000*l.* (see 'First Report on Railways,' 1839, Appendix); and the sums authorised by Parliament to be raised for various public purposes—for roads, bridges, docks, canals, navigations, markets, lighting and improving towns, afford evidence of the abundance of capital which was constantly seeking investment, in addition to its customary employment in commerce and manufactures.

The returns of the assessment of property for the income tax will not present any comparison of the wealth of the country in 1831 and in 1841; but very important results may be deduced from them, which must not be overlooked. The annual value of real property, as assessed to the property tax in 1815, was returned at 51,398,423*l.*; in 1842 it was returned at 82,233,844*l.*; and the tithes at 1,668,113*l.* In Scotland the real property was assessed in 1811 at 5,972,523*l.*; in 1842 at 9,284,382*l.* In the absence of any intermediate assessment a rough estimate only can be made of the increase in the value of real property between 1831 and 1841; but we are inclined to think it was not less than from 20 to 25 per cent. In 1815 the annual profits of trade in England and Wales were assessed at 35,028,051*l.* No similar account for 1842-3 has yet been published; but as the actual receipts by government amounted to 1,466,985*l.* at 2*l.* 18*s.* 4*d.* per cent., after exempting all profits under 150*l.* a year, the annual amount of all profits above 150*l.* a year may be fairly estimated at 50,153,333*l.*; and after adding a fifth, or 10,000,000*l.*, for profits under 150*l.*, the proportion of increase which accrued between 1831 and 1841 will not be overrated at 20 per cent.

The amount of capital upon which legacy-duty had been paid in Great Britain, from 1797 to 1831 inclusive, was 741,648,197*l.*; in 1841 it amounted to 1,163,284,207*l.* Thus, in this period of ten years, legacy-duty had been paid upon a capital of 422,636,009*l.* 19*s.* 5*d.*, or considerably more than one-half of the aggregate amount upon which the duty had been paid in the thirty-four preceding years. In 1831 the produce of the stamp-duties upon probates of wills and letters of administration in the United Kingdom amounted to 918,667*l.*; in 1841 to 1,012,481*l.*, showing an increase of 10·2 per cent.

These various statements all confirm, more or less distinctly, the conclusion which had been suggested by less direct, but not less conclusive evidence, viz., that the capital of the country appears to have increased in the period of ten years from 1831 to 1841, in a greater ratio than the population; and, consequently, that the funds necessary for the employment of labour and for maintaining the growing population in increased comfort, had multiplied more rapidly than the people for whose use they were available.

Having now compared the increase of national wealth with the increase of population, so far as the statistics of consumption, production, and accumulation afford such comparison; a confirmation of the results presented by our analysis is

to be found in the Reports of the Census Commissioners, together with many singular facts illustrative of the state and destinies of our country. In following these, however, it will be necessary to consider Great Britain and Ireland separately.

The first point illustrative of the condition of the people is, that the increase in the number of inhabited houses in England and Wales since 1831 was two per cent. greater than that of the population. Too much reliance, however, must not be placed upon this bare statistical result, as the quality of the houses may be a more important matter than their positive number; but so far as it goes it is satisfactory. The misery and destitution which prevail in many parts of Great Britain are undeniable; squalid poverty and glittering wealth meet the eye in every street; but the apparent fact of an increased house accommodation should make men hesitate before they declare that poverty is spreading at one extremity of society while wealth is agglomerating at the other. Apart from this direct evidence that one of the most painful results of poverty, the overcrowding of many families into the same houses, though painfully prevalent in Liverpool and some other places, has not generally increased—it may be asked what better proof, amongst many, can be given of the general prosperity of the masses of the people than the application of so vast a capital to productive industry as must have been required for the building of 500,000 new houses in a space of ten years?

It is well known that the rate of increase of the population from 1831 to 1841 in England and Wales was apparently less than in the preceding ten years, by 1½ per cent.; and if the bare fact of numerical increase were taken as a test of national strength and prosperity, this fact might be deemed a symptom of decay. To this discouraging view, however, a complete answer is given by the commissioners, who ascribe the apparently diminished rate of increase wholly to emigration. "The additional population which would be required in order to make the ratio of increase equal to that of the former decennial period would be 208,998, being 1½ per cent. on the population of 1831; and from returns which have been furnished from the Emigration Board, it appears that the total excess of emigration in the ten years ending 1841, compared with the ten years ending 1831, may be estimated at 282,322." (See Preface, p. 11.) Thus, instead of attributing this apparent decrease to the pressure of poverty by which the natural growth of population was checked, we must ascribe it to a cause which is calculated to raise the wages of labour in this country, while it affords to the emigrants a wider field and, we trust, a larger reward for their industry.

Another fact of the highest importance is clearly proved, viz.—that the commerce and manufactures of Great Britain alone afford employment for the increasing population. While the increase upon the whole kingdom amounted, as already stated, to 13·2 per cent., the increase in the manufacturing and commercial counties was greatly above that proportion, and in the agricultural counties considerably below it. In Chester the increase was 18·3 per cent.; in Durham, 27·7; in Lancaster, 24·7; in Middlesex, 16; in Monmouth, 36·9; in Stafford, 24·3; in Warwick, 19·3; and in the West Riding of York, 18·2. In Buckingham the increase was only 6·4 per cent.; in Cumberland, 4·9; in Devon, 7·8; in Dorset, 9·9; in Essex, 8·6; in Hereford, 2·4; in Norfolk, 5·7; in Oxford, 6·2; in Suffolk, 6·3; in Westmoreland, 2·5; and in the North Riding of York 7 per cent. It is useless, therefore, to discuss the relative importance of agriculture and manufactures in the abstract; for agricultural counties cannot support their own population; while the manufacturing and commercial counties find employment for their own natural increase and for the surplus of other counties which the land cannot maintain.

The relative increase of the agricultural and commercial population is shown by the following proportions per cent.:—

	Agricultural.	Commercial.	Miscellaneous.
1831	28	42	30
1841	22	46	32

But in 1831 the returns referred to families, and in 1841 to individuals; and as a greater number of children are employed in manufactures than in agriculture, the difference may have been slightly augmented by this form of enumeration.

A still more important point of comparison is the relative increase of different classes of occupations in the same period of 10 years from 1831 to 1841. A comparative return of the Commissioners (Preface, p. 21) includes males only aged 20 years and upwards, and exhibits the following results:—The number of occupiers and labourers in agriculture had decreased in that period from 1,251,751 to 1,215,264; but the Commissioners explain this result by supposing that numerous farm-servants had been returned in 1841 as domestic servants instead of as agricultural labourers. Persons engaged in commerce, trade, and manufacture had increased from 1,572,292 to 2,039,409 (or 29·7 per cent.): capitalists, bankers, professional and other educated men, from 216,263 to 286,175 (or 32·3 per cent.): labourers employed in labour not agricultural had *decreased* from 611,744 to 610,157: other males 20 years of age, except servants, had increased from 237,337 to 392,211: male servants 20 years of age and upwards had increased from 79,737 to 164,384, including, however, as already noticed, many farm-servants. For the purpose of instituting a just comparison of the relative increase of particular employments, it must be understood that the total number of male persons 20 years of age and upwards (exclusive of army, navy, and merchant seamen) had increased, in this period of ten years, from 3,969,124 to 4,707,600 (or 18·6 per cent.). Making due allowance for the probable error in the return of agricultural labourers, we are forced to conclude that that class had either not increased at all or had increased in a very small degree: and that the class of labourers not agricultural had positively diminished: while capitalists, bankers, professional and other educated men, had increased 32·3 per cent.; persons engaged in trade and in manufactures 29·7 per cent.; and domestic servants 106 per cent., or allowing for farm-servants, say 90 per cent. Thus the two classes who earn the lowest wages were alone stationary or retrograde: the highest class in wealth and intelligence had increased 32·3 per cent.; and the domestic servants, whose numbers are a certain indication of the means of their employers, had increased 90 per cent. Nor must another important fact be omitted in connexion with the decrease in the class of labourers, viz. the immense numbers of Irish who notoriously perform the most laborious parts of industry. In Lancashire the persons born in Ireland formed, in 1841, 6·3 per cent. upon the whole population; in Cheshire, 3 per cent.; in Middlesex, 3·6 per cent.; in Ayrshire, 7·3; in Dumbartonshire, 11; and in Lanarkshire and Renfrewshire, upwards of 13 per cent. It would seem, therefore, that the class of British labourers are gradually raising themselves into a higher condition and more lucrative employments; and that the demand for the lowest description of labour, caused by their withdrawal from it, is supplied by their Irish brethren.

The number of female domestic servants increased in Great Britain from 670,491 in 1831, to 908,825 in 1841, or 35 per cent.

In concluding this statement of the industrial occupations of the people of Great Britain, it is gratifying to learn that the whole of the "almspeople, pensioners, paupers, lunatics, and prisoners" amounted in 1841 to 1·1 per cent. only upon the population.

We may now pass to some of the most material facts disclosed by the census of Ireland. The constant migration of labourers from the agricultural counties of England to the manufacturing districts, and the extensive emigration of the last ten years, have been already noticed; and precisely the same circumstances are observable in Ireland. In the period from 1831 to 1841 no less a number than 403,459 persons left Ireland, either to settle in the populous towns of Great Britain or to emigrate to the British Colonies or the United States; while an extensive migration was taking place, within Ireland itself, to Dublin and to other commercial and manufacturing places.

The returns of house accommodation in Ireland present a very lamentable picture. The Commissioners have adopted a judicious classification by which the houses are distinguished under four classes, the last being that of the cabin or mud hut with one room, and the third class but one degree better. The following statement shows the proportion per cent. which the number of families in each class of accommodation bear to the total number of families :—

	1 Class.	2 Class.	3 Class.	4 Class.
Rural districts	1·2	15·3	40·	43·5
Civic districts	7·	22·4	33·9	36·7

The value of this classification is obvious, and if hereafter adopted in England it will render the statistics of house accommodation of considerably greater weight, in estimating the social condition and habits of the people. A mud hut upon a common ought not to rank even, in the array of figures, with the mansions of wealthy cities.

Even in Ireland it appears that manufactures are attracting the agricultural population; for the number of families engaged in trade and manufactures have increased five per cent. since 1831; and the number employed in agriculture have diminished in a corresponding proportion.

The population have been divided by the commissioners into three great classes, nearly equivalent to the three ordinary grades of society: and the proportions of families appear as follow:

	Rural.	Civic.
Vested means, Professions, &c.	1·8	6·6
The direction of labour .	28·3	50·
Their own manual labour	68·	36·4
Means not specified . .	1·9	7·

The occupations of all individuals above 15 years of age are classified: 1st, as ministering to food; 2nd, as ministering to clothing; 3rd, as ministering to lodging, &c.; 4th, as ministering to health, education, &c.; and 5th, as unclassified or miscellaneous; each class bearing respectively the following proportions to the entire population, viz. 23·3; 11·; 2·; 17·; and 6·. But as no similar classification had ever been adopted before, no comparison is practicable with any preceding period.

The report of the Irish Census Commissioners abounds in highly interesting inquiries into the condition of the Irish people; but as they do not afford any comparison with the year 1831, the object which we had proposed cannot be carried any further with respect to that country.

This succinct view of the material progress of society, as far as it admits of elucidation by statistics, is certainly incomplete without a consideration of its advances or retrogression in religion, in morals, and in education; but these questions, far more important in themselves than any we have here discussed, are not so immediately connected with the results of the Census.

CENTRAL CRIMINAL COURT. [CIRCUITS.]

CERTIFICATE. [BANKRUPT, p. 292.]

CERTIORA'RI, in law, is a writ issuing from one of the superior courts, directing the judges or officers of an inferior court to transmit or cause to be certified (*certiorari facias*) records or other proceedings. The object of the removal is either that the judgment of the inferior jurisdiction may be reviewed by the superior court, or that the decision and the proceedings leading to it may take place before the higher tribunal. An instance of the former is where the convictions of magistrates or the judgments or orders of courts of quarter-sessions are removed by certiorari into the court of King's Bench by way of appeal against their validity, in which case the decision which has previously been given is re-considered, and is confirmed or set aside. An instance of the latter is where an indictment found against a peer by an inferior jurisdiction is certified or transmitted into the Court of Parliament or the Court of the Lord High Steward, in order that the further proceedings and the adjudication may take place before the proper tribunal. By this writ, indictments, with the proceedings thereon, may, at any time before actual trial, be removed from the assizes or quarter-sessions into the Court of

King's Bench, as the supreme court of ordinary criminal jurisdiction. The 5 & 6 Wm. IV. c. 33, enacts that no certiorari shall issue to remove indictments or presentments from inferior courts to the Court of King's Bench, at the instance of a prosecutor, without leave obtained from the court, as by a defendant. In order to avoid the occurrence of frivolous appeals, it is usual in statutes which give summary jurisdiction to inferior tribunals to restrict, or altogether take away, the right to a certiorari.

CE'SSIO BONO'RUM, in the law of Scotland, is the name given to a process by which, as by the insolvency system in England, the estate of an insolvent person who does not come within the operation of mercantile bankruptcy is attached and distributed among his creditors. The term is derived from the deed of cession, or the assignment by which, as the counterpart of the relief afforded to him from the immediate operations of his creditors, the insolvent conveys his whole property for their behoof. Both the nomenclature and the early practice of the system are taken from the Roman law. (*Dig.* 42, tit. 3, "de cessione bonorum.") According to the more ancient law, the person released from prison on a cessio bonorum was bound to wear a motley garment called the dyvour's habit. In later times this stigma became the penalty of fraud, and it was subsequently disused. Before the passing of the late act, the jurisdiction in the awarding of Cessio was entirely confined to the Court of Session, and the insolvent was required to have been a month in prison before he could sue out the process. By 6 & 7 Will. IV. c. 56, the system was remodelled. The process may now be sued out either in the Court of Session or in the sheriff's local court. It may be taken advantage of by any person who is in prison for civil debt, or against whom such a writ of imprisonment has issued. It proceeds on notice to the creditors, and an examination and surrender of the insolvent. Proceedings instituted in the Sheriff Court are liable to review in the Court of Session. Cessio bonorum exhibits, like the insolvency system in England, this important difference from mercantile bankruptcy, that the person who obtains the privilege is not discharged from his debts, but only from proceedings against his person for payment of past debts, his estate continuing to be liable to the operations of his creditors. In Scotland, however, the common law means of attaching a debtor's property are simple and effectual, and there does not appear to have been there the same inducement as in England to make the process for the distribution of the debtor's effects an instrument of their discovery. The Scottish system, moreover, cannot be used by the creditors as a means of compelling their debtor to distribute his estate. It is a privilege of the debtor, and being seldom resorted to except by persons in a state of destitution who are harassed by vindictive creditors, the improvement of the system has not been a matter of much interest either among lawyers or legislators.

CESSION. [BENEFICE, p. 349.]

CESTUI QUE TRUST. [TRUSTEE.]

CHALLENGE. [JURY.]

CHAMBERLAIN (*custos cubiculi*, or *cubicularius*, keeper of the chamber). Cubicularius was the Roman name for a slave whose special business was to look after the rooms or chambers in the house, introduce visitors, and the like. The cubicularius was thus a confidential slave or freedman, as the case might be, and a kind of guardian of his master's person. Under the emperors the cubicularii were officers in the imperial household; and were called the "cubicularii sacri cubiculi," the chamberlains of the imperial chamber. (*Cod.* xii. tit. 5.) The emperor's wife, the Augusta, also had her chamberlains. This office, like many others in royal households, is derived from the usages of the later Roman Empire. In the Anglo-Saxon times, in England, the chamberlain appears to have had the name of Camerarius, and had the keeping of the king's treasure (Ealred, in *Vit. S. Edw. Confess.*, c. ii. p. 9), by which name this officer also occurs in the Domesday Survey. The word chamber (French, *chambre*) is from the Latin camera.

The office of lord great chamberlain of England was once of the highest dignity, and was held in grand serjeanty

from the second year of King Henry I. by the family of De Vere, from whom it passed, by a female heir, to the family of Bertie. By the statute of precedency, 31 Hen. VIII., the great chamberlain's place was next to that of the lord privy seal. In 1714 the Marquess of Lindsay, then hereditary great chamberlain of England, having been raised to the dukedom of Ancaster, surrendered this precedency for himself and his heirs, except only when he or they should be in the actual execution of the duties of the said office, in attending the person of the king or queen, or introducing a peer into the House of Lords. This surrender was confirmed by 1 Geo. I. c. 3. The duties which now devolve upon the great chamberlain are, the dressing and attending on the king at his coronation; the care of the ancient Palace of Westminster; the provision of furniture for the Houses of Parliament, and for Westminster Hall, when used on great occasions; and attendance upon peers at their creation, and upon bishops when they perform their homage. On the death of Robert, the last duke of Ancaster but one, in 1779, the office of hereditary great chamberlain descended to his two sisters, Priscilla, Lady Willoughby de Eresby, and Georgiana Charlotte, Marchioness Cholmondeley. The office is now jointly held by the families of Cholmondeley and Willoughby de Eresby, and the honours are enjoyed in each alternate reign by each family successively.

The office of lord chamberlain of the king's household is changed with the administration. He has the control of all parts of the household (except the ladies of the queen's bed-chamber) which are not under the direction of the lord steward, the groom of the stole, or the master of the horse; the king's chaplains, physicians, surgeons, &c., as well as the royal tradesmen, are by his appointment; the companies of actors at the royal theatres, as part of the household, are under his regulation, and he is also the licenser of plays. [THEATRE.] One of the officers in his department is styled Examiner of Plays.

The chamberlain of the corporation of the city of London is an officer elected by the freemen who are liverymen. By an act of common council of 5 Henry IV. the office is an annual one, but it is very rarely that the existing officer is opposed. There has been no such opposition since 1778. The duties of the chamberlain are judicial and administrative. He admits on oath all persons entitled to the freedom of the city, and hears and determines all matters of complaint between masters and apprentices, and may commit either. He may discharge the apprentice from his indentures, and a part of the premium may be recovered by a peculiar process in the Lord Mayor's Court. An appeal is said to lie from the decision of the chamberlain to the lord mayor. The chamberlain has the conservation of lands, monies, or goods of citizens who die intestate, leaving orphans, on the application of such orphans or others on their behalf, for which purpose the chamberlain is deemed in law a corporation sole; but such applications are now rarely made. As treasurer of the corporation he has to receive all rents, profits, and revenues of markets and other items of receipt forming the income of the corporation, and to pay all money on account of the corporation upon competent warrants or orders. The fixed annual income of the chamberlain is 1160*l.* 9*s.* 4*d.*: his "ancient bill of fees" is 94*l.* 4*s.* a-year. He obtains an annual profit of from 1000*l.* to 2000*l.* from balances of the corporation money retained in his hands. This principle of remunerating a public officer is strongly objected to by the Commissioners of Corporation Inquiry (*Second Report*, p. 102).

In the Exchequer Court of the County Palatine of Chester there is a chamberlain, an office generally held by some nobleman; and there is also a vice-chamberlain.

There was an officer called the chamberlain in two hundred and three of the municipal corporations investigated in 1834 by the Commissioners of Corporation Inquiry.

CHANCEL. This is rather a term of ordinary discourse than one which would be used in a technical description of the several parts of a Christian church. As far as we have observed, it is now used

to denote that part of a church in which the communion table or altar is placed, with the area before it, in which the congregation assemble when the Eucharist is administered. An outcry was raised at the Reformation against the rubric prefixed to the Common Prayer, which ordained that the chancels should remain as in times past. The more ardent reformers asserted that this ordinance tended only to magnify the priesthood; and hence the modern practice of performing divine service in the body of the church, though the chancel still remains as a separate part of the edifice. In many churches the Epistles and Gospels and the Commandments are read at the communion-table, the proper place for which is the chancel. The chancel was often separated from the nave or body of the church by lattice-work, *cancelli*, and it was from this circumstance that the term chancel seems to have originated. The word cancelli is used by Cicero and other Latin writers to express a partition made by upright and cross pieces of wood or metal for the purpose of making any barrier or separation in courts of justice, in a theatre, and so forth.

In some churches we may hear of the chancel of a particular family. This is in cases in which some particular family has had a private oratory within the church, which has usually been also the burial-place of the family. These private chapels or chantries are sometimes called chancels, for the same reason that the great choir is sometimes so called; that is, in consequence of being divided from the rest of the church by *cancelli*.

CHANCELLOR (in Latin, *Cancellárius*). The primary meaning of cancellarius is "qui ad cancellos assistit," one who is stationed at the lattice-work of a window or a door way, to introduce visitors, &c. A cancellarius in this sense was no more than a door-keeper. The emperor Carinus made one of his cancellarii praefect of the city, a promotion which caused great dissatisfaction. (Vopiscus, *Carinus*, c. 16.) In another sense, cancellarius was a kind of legal scribe, so called also from his position at the cancelli of the courts of law. The cancellarius, under the later emperors, and in the Constantinopolitan court, was a chief scribe or secretary (ὁ μέγας λογοθέτης), who was ultimately invested with judicial powers, and a general superintendence over the rest of the officers of the emperor. He was called cancellarius because he sat *intra cancellos* (within the lattice), a screen which divided off a portion of a larger room for the sake of greater privacy; from which circumstance the chancel of a church also acquires its name.

The prelates of the Roman church had likewise an officer so called; in the Church of England, each bishop has a chancellor, who exercises judicial functions. All the modern nations of Europe have or have had chancellors, though the powers and duties seem to have varied in each.

In England the chancellor was originally the king's chief secretary, to whom petitions were referred, by whom patents and grants from the crown were approved and completed, and by whom reports upon such matters were, if necessary, made to the king; hence he was sometimes styled Referendarius. This term occurs in a charter of Ethelbert, A.D. 605; and Selden (*Treatise on the Office of Chancellor*) considers it synonymous with chancellor, a name which, he says, first occurs, in the history of England, in the time of Edward the Elder, about A.D. 920.

In the capacity of secretary he was the adviser of his master; prepared and made out his mandates, grants, and charters, and finally (when seals came into use) affixed his seal. Hence, or perhaps because in early times he was usually an ecclesiastic, he became keeper of the king's conscience, examiner of his patents, the officer by whom prerogative writs were prepared, and keeper of the great seal. The last ecclesiastic who exercised the office was John Williams, archbishop of York, who was lord keeper from July 10, 1621, to November 1, 1625; his friend and secretary, John Hacket, who became bishop of Lichfield and Coventry, wrote his life in a volume of singular interest, which he entitled 'Scrinia Reserata.'

The interference of the king, as the source of justice, was frequently sought

against the decisions of the courts of law, where they worked injustice; and also in matters which were not cognizable in the ordinary courts, or in which, from the maintenance or protection afforded to his adversary, the petitioner was unable to obtain redress. The jurisdiction with which the English chancellor is invested had its origin in this portion of discretionary power, which was retained by the king on the establishment of courts of justice (*Legal Judicature in Chancery stated*, p. 27, *et seq.*). Though the exercise of these powers in modern times is scarcely, if at all, less circumscribed by rule and precedent than the strict jurisdiction of the courts of law [EQUITY], controversies have at times arisen as to the powers of the chancellor; the particulars of one dispute have been preserved to us entire. (*The Jurisdiction of the Court of Chancery vindicated.* Printed at the end of 1 *Ch. Rep.* and in the 1st vol. of *Collect. Jurid.*)

The style of the Chancellor in England is Lord High Chancellor of Great Britain. He takes rank above all dukes not of the blood royal, and next to the archbishop of Canterbury. He is appointed by the delivery of the great seal into his custody, though there are instances of his having been appointed by patent. The resumption of the great seal by the king determines his office. By virtue of his office he is the king's principal adviser in matters of law, and a privy counsellor; speaker and prolocutor of the House of Lords, chief judge in the Court of Chancery, and the head of the profession of the law; visitor in the king's right of all hospitals and colleges of royal foundation; and patron of all crown livings under the value of 20*l.* a year, according to the valuation made in the reign of Henry VIII., and confirmed in that of Elizabeth. [BENEFICE, p. 352.] He appoints and removes all justices of the peace, though usually only at the recommendation of lords-lieutenants of counties. He issues writs for summoning parliaments, and transacts all business connected with the custody and use of the great seal. To him was intrusted the care of infants and their property upon the dissolution of the court of wards and liveries; and he has the jurisdiction over idiots and lunatics by special delegation from the crown. He also exercises a special jurisdiction, conferred upon him by various statutes, as original and appellate judge, as to charitable uses, friendly societies, infant lunatic and idiot trustees, in certain appeals from the court of review, in bankruptcy, and in many other cases. He is a conservator of the peace, and may award precepts and take recognizances to keep the peace; and has concurrent jurisdiction with the other judges of the superior courts, with respect to writs of habeas corpus. Except in the case of service of process, given to him by some recent statutes, the lord chancellor has no jurisdiction in Scotland.

The authority of lord chancellor and lord keeper are made the same by the stat. 5 Eliz. c. 18: it is not now customary to appoint a lord keeper, and of course there cannot now be a lord chancellor and lord keeper at the same time. The last lord keeper was Lord Henley, in 1757. The great seal is however sometimes put into commission during the temporary vacancy of the office, or the sickness of the chancellor, the seal being intrusted to the chief commissioner. (1 Will. and M. c. 21.)

The chancellor has also important political functions: he has a seat in the cabinet, and usually takes an active part in public measures. He resigns office with the party to which he is attached.

By 3 & 4 Wm. IV. c. 111, § 3, in consideration that the Chancellor had lost the patronage of certain offices then abolished, the king is empowered to grant an annuity of 5000*l.* a year to the Lord Chancellor or Lord Keeper on his resignation of office. The salary of the Lord Chancellor is 10,000*l.* a year, and is paid out of the Suitors' Fee Fund. He has besides a salary as Speaker of the House of Lords. There is also a Lord High Chancellor of Ireland, whose authority within his own jurisdiction is in most respects the same as that of the Lord High Chancellor of Great Britain. The salary of the Irish Chancellor, which is paid out of the Consolidated Fund, is 8000*l.* a year. His retiring pension is 3692*l.* a year. (Selden, *Off. Ch.*; Black-

stone, *Com.*; Story *On Equity*; and the *Books of Chancery Practice.*) [CHANCERY.]

The *Chancellor of a Diocese or of a Bishop* is Vicar-general to the bishop, holds his courts, and directs and assists him in matters of ecclesiastical law. He has a freehold in his office, and he is not necessarily an ecclesiastic; but if he is a layman, or married, he must be a Doctor of the Civil Law. (Blackstone, *Com.*; 37 H. VIII. c. 17.)

The *Chancellor of a Cathedral* is an officer who superintends the regularity of the religious services.

The *Chancellor of the Duchy of Lancaster* presides either in person or by deputy in the court of the Duchy of Lancaster concerning all matters of equity relating to lands holden of the king, in right of the Duchy of Lancaster. His salary is 2000*l.* a year, and that of the Vice-Chancellor is 600*l.*: the fees, which amount to 30*l.* or 40*l.* annually, are deducted from the salary The Vice-Chancellor holds courts both in Westminster and in Lancashire.

The *Chancellors of the Universities of Oxford and Cambridge* are elected by the respective corporate bodies of which they are the heads; they exercise exclusive jurisdiction in all civil actions and suits where a member of the University or privileged person is one of the parties, except in cases where the right to freehold is concerned. In both the English Universities the duties of the Chancellor are in nearly all cases discharged by a Vice-Chancellor.

The *Chancellor of the Exchequer* is under-treasurer, and holds the seal of the Exchequer. The office of Lord High Treasurer is now executed by the Lords Commissioners of the Treasury. The Chancellor of the Exchequer is the principal finance minister of the crown: the office is sometimes held by the Prime Minister when he is a member of the House of Commons. The legal functions of the Chancellor of the Exchequer are now merely formal. [EXCHEQUER.] Bills in the Exchequer were addressed to him, and to the barons of that court, so long as the equity jurisdiction of the Exchequer existed, and on some occasions (as on his appointment) he sits in court; but all the legal business is transacted by the barons. If the chief baron and barons are equally divided in opinion, the Chancellor of the Exchequer may be required to re-hear the cause with the barons, and give his decision. The last instance occurred in 1735, when Sir Robert Walpole gave his decision upon a question of considerable doubt and difficulty, which is said to have given great satisfaction. (Blackstone, *Com.*; Fowler's *Exchequer Practice.*)

The *Chancellor of the Order of the Garter* and other orders of knighthood seals and authenticates the formal instruments of the chapter, and keeps the register of the order. He exercises various functions at the installation of the knights, and during their meetings and processions.

CHANCELLOR OF SCOTLAND, As in England, the chancellor of Scotland was always a high officer of the crown, and had great influence with the king and authority in his councils. As in England too, that authority at length extended itself beyond its former limits, and affected the whole judicial power of the kingdom. Its operation and effect in the two countries, however, was different: for while in England the chancellor only carved out for himself a jurisdiction in equity, in Scotland he reached the head of the administration of justice, and sat in a court which dispensed both equity and common law, and the course of proceeding in which all the other judicatures of the realm were bound to follow.

In 1425, which was shortly after the return of King James I. from his long captivity in England, the "chancellor and with him certaine discreete persones of the thre estates chosen and depute by the king" were erected into the court of the session, for the final determination of all matters competent to the king and his council. The court of the session, however, expired with Bishop Wardlaw, from whom in all likelihood it originated; the chancellor's office being taken, on his death, from his protégé, Bishop Cameron, and given to Sir William Crichton, a layman, when the former policy of determining suits by the old common law was

restored. This continued (with the exception of an attempt to the contrary in 1457, probably under the influence of Bishop Shorsewood, the favourite and confessor of King James II.) till the time of Bishop Elphinstone, to whom undoubtedly may be ascribed the crafty acts passed in 1487 for the recovery of the large jurisdiction of the chancellor and court of the session, as well as the act 1494, c. 5, to enforce in the courts the study and practice of the canon and civil laws. Nor perhaps shall we greatly err in conceiving his zeal to have been employed in establishing in 1503 the court of daily council, which was essentially a restoration of the old court of the session. But all these proved only preparatory steps to the erection of the court of council and session, or college of justice, which was instituted in 1532, and has continued to our own time. Of this college the chancellor, or, as he then began to be styled, lord chancellor of Scotland, was to be principal; and as on the one hand it was the supreme court of the kingdom, and on the other all inferior courts were required to copy its proceedings, it wielded the whole judicative power of the country. It early claimed also, and exercised, a large legislative power under the statutes permitting it to pass acts of sederunt; and the officers who executed its warrants and decrees were either its own macers or else messengers, over whom it obtained complete control. These powers the court wielded so as to effect nearly an entire change of the law. The ecclesiastical estate for some time predominated both on the bench and at the bar. The consequence was, the canon and civil laws became, what indeed they used to be styled, the common law of the land, and the old common law became obsolete and antiquated. Much of this has been corrected since the Reformation; and still more since the union with England, where the old common law has ever continued the antagonist of Roman jurisprudence. At the Reformation the authority of the canon law ceased, and not long afterward ministers of the gospel were disabled by statute from being either of the bench or bar. The authority of the canon law was in like manner essentially broken by the Union, when both portions of the island became one great mercantile community, to which the civil law was in many respects unsuitable; and since that event various provisions have been made to improve and assimilate the laws and practice of the two kingdoms.

The similarity of procedure in the court of session in Scotland and the high court of chancery in England is striking. Both courts indeed, and the ecclesiastical courts of both countries, borrowed their forms from the court of Rome, and with these last the forms of the court of session in many respects still agree. The bill or written supplication to the court for letters, whether of summons or of diligence, is of the same nature with the supplication for letters in the court of Rome; and it is observable that when the desire of the bill is granted, it is in the same terms in both courts. The condescendence and answers are plainly derived from the articuli and responsiones of the papal tribunal. The initialia testimonii, or purging of a witness, are identical with the interrogatoria generalia of that court. Letters of advocation, suspension, and reduction are well known there. The "malè appellatum et benè processum" is but verbally translated in the phrase of the Scots court, "finds the letters orderly proceeded;" and letters of horning, caption, and relaxation bear their papal origin impressed upon them. It appears also that from an early period the court issued commissions to its macers to perform judicial duties, as the ecclesiastics appoint the inferior church officers their legates and commissaries for the like purposes; and at an early time also the judges began the yet subsisting custom of changing their name on their elevation to the bench, in imitation, as it seems, of the like custom on elevation in the papal hierarchy.

From what is above stated, we may see why there is no court of chancery in Scotland, separate from the courts of common law, as in England; the whole judicatures of Scotland having become subject to the court of session, where the chancellor presided, dispensing both equity and common law. But from the earliest times there was an office of chancery in

Scotland, and we shall find that many of the early chancellors had been 'clerici cancellarii.'

In the list of chancellors for Scotland in the 'Penny Cyclopædia,' art. "Chancellor," various errors are corrected which occur in Crawford's 'Officers of State' in the series of chancellors of Scotland. In Beatson's 'Political Index' there is a chancellor as early as the reign of Malcolm III., but the more authentic series begins with Constantine, earl of Fife, who was chancellor in the time of Alexander I.

By art. 24 of the treaty of Union, it was provided that there should in future be but one great seal for the United Kingdom, and that a seal should be kept and used in Scotland for such private rights or grants as had usually passed the great seal of Scotland. The office of chancellor of Scotland then properly expired, and none have been appointed to it since the earl of Seafield, who was chancellor at the time of the Union.

CHANCERY (*Cancellaria*); the term is derived from Chancellor, *Cancellarius*, and signifies the court where that judge exercises his functions. There are several chanceries, as there are several chancellors; but the place where the Lord High Chancellor's judicial functions are exercised is called the High Court of Chancery.

The principal part of the business of the Court of Chancery consists in the administration of Equity, a name which in this country comprehends those rules of law, which are applicable to such matters as belong to the jurisdiction of the court. The Court of Exchequer had a similar jurisdiction, which was abolished by 5 Vict. c. 5. [EQUITY.]

The Lord Chancellor, the three Vice-Chancellors, and the Master of the Rolls, are the judges by whom equity is administered in Chancery. Each of them has a separate court. In term-time they sit in Westminster Hall; in vacation, the Chancellor and Vice-Chancellors sit in Lincoln's Inn, and the Master of the Rolls at the Rolls, in Chancery-lane.

The Master of the Rolls is appointed by the crown by letters patent, and holds his office on the same terms as the common law judges, that is, during good behaviour. He has the power of hearing and determining originally the same matters as the Lord Chancellor, excepting cases in lunacy and bankruptcy; orders and decrees pronounced by the Master of the Rolls are good and valid, but they must be signed by the Lord Chancellor before they are enrolled, and they are subject to be reversed by the Chancellor. The Master of the Rolls has precedence next to the Lord Chief Justice of the King's Bench. This office is one of high antiquity. The salary is 7000*l.* a year under 1 Vict. c. 46. The Master of the Rolls in Ireland has 3969*l.* a year under 4 Geo. IV. c. 61.

The office of Vice-Chancellor was created by 53 Geo. III. c. 24. This officer (who, in Chancery, takes precedence next to the Master of the Rolls) is appointed by the crown by letters patent, and holds his office during good behaviour. Rank and precedence are given him by 5 Vict. c. 5 next after the Lord Chief Baron of the Exchequer. If a member of the Privy Council, he is also to be a member of the Judicial Committee. He has power to hear and determine all matters depending in the Court of Chancery, either as a court of law or as a court of equity, or as incident to any ministerial office of the said court, or which are subjected to the jurisdiction of such court or of the Lord Chancellor by any special act of parliament, as the Lord Chancellor shall from time to time direct. All orders and decrees of the Vice-Chancellor are valid, but subject to be altered or reversed by the Chancellor; and they must be signed by the Lord Chancellor before they can be enrolled. It is expressly provided by the act that the Vice-Chancellor has no power to alter or discharge any decree or order made by the Lord Chancellor, unless authorised by the Lord Chancellor, nor any power to alter or discharge any order or decree of the Master of the Rolls. The salary is 6000*l.* a year, granted by 2 & 3 Will. IV. c. 116. On the next appointment of a Vice-Chancellor, under 53 Geo. III. c. 24, the salary will be 5000*l.*, with a retiring pension of 3500*l.* Since the appointment of two additional Vice-Chancellors

by 5 Vic. c. 5, he is styled the Vice-Chancellor of England.

The act appointing two additional judges (Vice-Chancellors) to assist in the discharge of the functions of the Lord Chancellor is the 5 Vict. c. 5. They are respectively styled the first Vice-Chancellor and the second Vice-Chancellor, and hold office during good behaviour. The act prohibits the appointment of a successor to that one of the two new Vice-Chancellors who was appointed second. The salaries of the new Vice-Chancellors are 5000*l.* a year each, paid out of the interest arising from the Suitor's Fund. The salaries of the secretary, usher, and train-bearer, of each Vice-Chancellor are fixed by the act at 300*l.* a year for the secretary, 200*l.* for the usher, and 100*l.* for the train-bearer. After fifteen years' service, or when incapacitated for the duties of office by infirmity, a pension not exceeding 3500*l.* a year may be granted to each Vice-Chancellor. If he holds any other office of profit under the crown the annuity will be reduced, so that on the whole his public income may not exceed 3500*l.* a year.

An appeal (which, strictly speaking, is nothing more than a re-hearing of the cause) may be made from any decision of the Master of the Rolls or the Vice-Chancellors to the Lord Chancellor, and the court of the Lord Chancellor has been of late years much occupied with such appeals: original causes are generally confined to the courts of the Master of the Rolls and the Vice-Chancellors. The appeal from the decree of the Lord Chancellor is to the House of Lords.

There are officers of the Court of Chancery by whom certain parts of the equitable jurisdiction are exercised. These officers have however no original power for this purpose, but derive all their authority from special delegation by one of the judges in Chancery. The principal of these officers are the Masters in Ordinary, and the Accountant-General. The Masters in Ordinary are eleven in number, besides the Master of the Rolls, who is the chief of them, and the Accountant-General. The number of Masters was increased from ten to eleven when the equity jurisdiction of the Court of Exchequer was abolished by 5 Vict. c. 5. They were formerly appointed by the Lord Chancellor, but are now appointed by the crown, and hold office during good behaviour. (3 & 4 Wm. IV. c. 94.) The salary is 2500*l.* a year. It is the duty of the Masters to execute the orders of the court upon references made to them, whether in exercise of its original jurisdiction, or under the authority of an act of parliament, and to make reports in writing upon the matters that are referred to them. The Masters' reports must be confirmed by the court in order to make them effectual. The heads of reference to the Masters are almost as numerous as the subjects of the court's jurisdiction. The principal subjects of reference are, to examine into any alleged impertinence contained in pleadings, and into the sufficiency of a defendant's answer; to examine into the regularity of proceedings taken in any cause, or into alleged contempts of court; to take the accounts of executors, administrators, and trustees, or between any parties whatsoever; to inquire into, and decide upon, the claims of creditors, legatees, and next of kin; to sell estates, and to approve of the investment of trust-money in the purchase of estates, and, for this purpose (or for any other, as the case may be), to investigate titles, and settle conveyances; to appoint guardians for infants, and to allow proper sums for their maintenance and education; to tax the costs of the proceedings in any suit, or under the orders of the court: and generally to inquire into and inform the equity judge upon all matters of fact, which are either disputed between the parties, or not so far ascertained by evidence as to preclude all doubt on the subject.

The *Accountant-General* is an officer created by the stat. 12 G. I. c. 32, which also regulates his duties. [ACCOUNTANT-GENERAL.]

The proceedings in the Court of Chancery are conducted by Bill and Answer. But besides the jurisdiction, of which a sketch has been given above, a summary jurisdiction, upon Petition only, has been given to Courts of Equity in certain cases by acts of parliament. The principal cases in which this summary jurisdiction

has been granted are those where trustees or mortgagees die without heirs or leaving infant heirs, or where trustees are out of the jurisdiction, or refuse to convey property to the persons beneficially entitled to it. In these, and many similar cases, the court is empowered, upon petition of the parties beneficially interested, to direct a conveyance or assignment of the property held in trust or on mortgage by the infant, or in case of a trustee having died without heirs, or being out of the jurisdiction of the court, or refusing to convey, to appoint some other person to convey in his place. The principal statutes relating to this branch of the jurisdiction of the court are, 1 Wm. IV. c. 47, 1 Wm. IV. c. 60, 1 Wm. IV. c. 65, 4 & 5 Wm. IV. c. 23, 5 & 6 Wm. IV. c. 17.

The stat. 52 G. III. c. 101 gives the court a summary jurisdiction in cases of abuse of charitable trusts. The court also appoints guardians for infants upon petition merely.

The jurisdiction exercised in Chancery over *infants* and *charities* is partly derived from the general equity jurisdiction, and partly from acts of parliament. (As to the origin of the jurisdiction over infants, see Coke upon Litt., by Hargrave, 88 b. n. 16; 2 Fonbl. *on Eq.*, p. 226, 232.)

The jurisdiction over infants is exercised principally in directing *maintenance* to be given them out of the property which they will enjoy on attaining their full age; in appointing and controlling *guardians* of them; and in providing suitable *marriages* for them.

A distinct part of the business in Chancery, though but a small part, arises from what is called *the common law jurisdiction of the Court of Chancery*.

It has chiefly respect to actions by or against any officer or minister of the Chancery, and to judicial proceedings respecting the acts of the king, when complained of by a subject. 3 Blackstone, *Com.* 48.

In actions depending in the Court of Chancery by virtue of its common law jurisdiction, the court has no power to try issues of fact. For this purpose the record of the pleadings must be delivered to the Court of King's Bench, and that court will have the issues tried by jury, and give judgment in the actions: and, from a judgment on demurrer in this court, it is said that a writ of error lies to the Court of King's Bench.

To the common law jurisdiction of the Court of Chancery belongs the power of issuing certain *writs*; particularly the writ of *habeas corpus*, and the writs of *certiorari* and *prohibition*, for restraining inferior courts of justice from assuming unlawful authority. (1 Madd. *Chanc.* 17, &c.)

The place where the common law jurisdiction of the Court of Chancery is exercised is the *petty bag office*; which is kept solely for this purpose. No part of the equity business of the Court of Chancery is carried on there.

The Court of Chancery, in respect of its common law jurisdiction, is said to be a court *of record*, which, as a court of equity, it is not. (Spelm. *Gloss.* 3 Bl. *Com.* 24.)

"In this ordinary or legal court," says Blackstone (vol. iii. 49), "is kept the *officina justitiæ*, out of which all original writs that pass the great seal, all letters patent, and all commissions of charitable uses, bankruptcy, sewers, idiotcy, lunacy, and the like do issue." The issuing of original writs, however, is now unfrequent. These writs, which were formerly the foundation of all actions in the courts of law at Westminster, have, with few exceptions, been abolished by recent statutes. Commissions of bankruptcy also are now never issued, owing to the late alterations in the bankrupt law. [BANKRUPT.]

The principle of the High Court of Chancery in England has led to the establishment of courts of equity in the British dominions and dependencies. Some of these are called Courts of Chancery. In each of the counties palatine of Lancaster and Durham, and also in Ireland, there is a court so named, which dispenses the same equity within the limits of its jurisdiction, as the High Court of Chancery. By 6 & 7 Wm. IV. c. 19, the palatine jurisdiction of Durham was separated from the bishopric and vested in the king, but the courts were expressly reserved. In the Irish Court of Chancery the Lord Chancellor for Ireland presides. From

these courts the appeal is immediately to the House of Lords.

In most of our colonies there are Courts of Chancery (Howard's *Laws of the Colonies*). From the colonial courts an appeal now lies to "the judicial committee of the Privy Council." (Stat. 2 & 3 Wm. IV. c. 92.)

There are Chancery Courts in some of the states which compose the North American Union.

CHANCERY, INNS OF. [INN.]

CHANTRY (Cantária, in the middle age Latin), a private religious foundation, of which there were many in England before the Reformation, established for the purpose of keeping up a perpetual succession of prayers for the prosperity of some particular family while living, and the repose of the souls of those members of it who were deceased, but especially of the founder and other persons named by him in the instrument of foundation. The French word Oratoire appears to correspond to chantry.

Chantries owed their origin to the opinion once generally prevalent in the Christian church of the efficacy of prayer in respect of the dead as well as the living. Among the English, it prevailed in all ranks of society. The inscriptions upon the grave-stones of persons of ordinary condition in the times before the Reformation almost always began with "Orate pro animâ," "Pray for the soul," which was an appeal to those who resorted to the churches to pray for the soul of the person who slept below. Princes and persons of great wealth, when they founded monasteries, included amongst the duties of the religious for whose use they gave them, that they should receive in them their bodies, and for ever make mention of them in their daily services. When a taste for founding monasteries declined, which may be referred to about the close of the twelfth century, the disposition to secure the same object, by the foundation of chantries, began to prevail extensively in the better classes of society, and it continued to the Reformation, when all such foundations were swept away as superstitious.

A chantry did not necessarily require that any edifice should be erected for it. Chantries were usually founded in churches already existing: sometimes the churches of the monasteries, sometimes the great cathedral or conventual churches, but very frequently the common parish church. All that was wanted was an altar with a little area before it and a few appendages; and places were easily found in churches of even small dimensions in which such an altar could be raised without interfering with the general purposes for which the churches were erected. An attentive observation of the fabric of the parish churches of England will often show where these chantries have been; in some churches there are perhaps small remains of the altar, which was removed at the Reformation, but the traces of them are seen more frequently in one of those ornamented niches called piscinas, which were always placed near the altars. Sometimes there are remains of painted glass which was once the ornament of these private foundations, and more frequently we see one of those arched recesses in the wall which are called Founders' Tombs, and which in many instances no doubt were the tombs of persons to whose memory chantries had been instituted.

In churches which consisted of only nave and chancel with side aisles, the eastern extremities of the north and south aisles were often seized upon for the purpose of these foundations; in the larger churches, in which the ground-plan resembles the cross on which the Saviour suffered, the transverse beams (transepts) were generally devoted to the purpose of these private foundations. In the great conventual churches and the churches of monasteries, it would appear as if provision was often made for these private chantries in the original construction, each window that looks eastward being often made to light a small apartment just sufficient to contain an altar and a little space for the officiating priest.

It was by no means unusual to have four, five, or six different chantries in a common parish church: in the great churches, such as old St. Paul's in London, the Minster at York, and other ecclesiastical edifices of that class, there were at the time of the Reformation

thirty, forty, or fifty such foundations. When the church allowed no more space for the introduction of chantries, it was usual for the founders to attach little chapels to the edifice. It is these chantry chapels, the use and occasion of which are now so generally forgotten, which occasion so much of the irregularity of design which is apparent in the parish churches of England. They were generally erected in the style of architecture which prevailed at the time, and not in accommodation to the style of the original fabric.

When chapels were erected for the especial purpose of the chantries, they were usually also the places of interment of the founder and his family, whence we sometimes find such chapels belonging, even to this day, to particular families, and adorned with monuments of many generations. One of the most beautiful chapels of this kind is in the little village of Sandal, a few miles from Doncaster, the foundation of Rokeby, archbishop of Dublin, who died in 1521. The church of Sandal being small, afforded no scope for the design of this magnificent prelate. Having determined that this should be the place of his interment, he erected a chapel on the north side of the choir, open, however, to the church on one side, being separated from it only by open wainscot. On entering it by the door the whole economy of one of these chapels is manifest. Under the window looking eastward an altar has stood; the piscina on the right remains. On each side of the east window is a niche where once, no doubt, stood an effigies of a saint whom the archbishop held in peculiar honour. In the centre is a brass indicating the spot in which the body of the prelate lies; and in the north wall is a memorial of him, having his arms and effigies, with an inscription setting forth his name and rank and the day of his decease, with divers holy ejaculations. The stone and wood work have been wrought with exquisite care, and the windows appear to have been all of painted glass. The Beauchamp chapel at Warwick contains the very fine monument and effigy of Richard de Beauchamp, Earl of Warwick, who died in 1439.

Sometimes chantries were established in edifices remote from any church, a chapel being erected for the express purpose.

In chantries of royal foundation, or in chantries founded by the more eminent prelates or barons, the service was conducted sometimes by more than one person. But usually there was only one officiating priest. The foundation deeds generally contain a specification of his duties, which consisted for the most part in the repetition of certain masses: but sometimes the instruction of youth in grammar or singing, and the delivering pious discourses to the people, made part of the duty of the chantry priests. They also contain an account of the land settled by the founder for the support of the priest. The names of the persons whom he was especially to name in his services are set forth, as well as the mode of his appointment and the circumstances in which he might be removed. Generally the king was named together with the founder and members of his family. This, it was supposed, gave an additional chance of the foundation being perpetuated. The king's licence was generally obtained for the foundation.

In many towns and country places there are ancient houses called chantry houses, or sometimes chantries, or colleges, which were formerly the residence of the chantry priests, and when called colleges they were the places where they lived a kind of collegiate life. These, as well as all other property given for the support of the chantry priests, were seized by the crown and sold to private persons, when by an act passed in the first year of King Edward VI. cap. 14, all foundations of this kind were absolutely suppressed and their revenues given to the king. An account had been taken a few years before of all the property which was settled to these uses, by the commissioners under the act 26 Hen. VIII. cap. 2, whose returns form that most important ecclesiastical document the 'Valor Ecclesiasticus' of King Henry VIII. The 'Valor' has been published by the commissioners on the 'Public Records' in five volumes folio.

The act of Edward VI. gave the king

all the colleges, free chapels, chantries, hospitals, fraternities or guilds, which were not in the actual possession of King Henry VIII. to whom the Parliament in the thirty-seventh year of his reign had made a grant of all such colleges, &c., nor in the possession of King Edward. The preamble of the act of Edward states that the object of the act was the suppression of the superstitions which such foundations encouraged, and the amendment of such institutions, and the converting them to good and godly uses, as for the erection of grammar-schools, and for augmenting of the universities, and better provision for the poor and needy. But this act was much abused, as the act for dissolving religious houses in King Henry VIII.'s reign had been, and private persons got most of the benefit of it. The money was not only not appropriated as it ought to have been, but both many grammar-schools and much charitable provision for the poor were taken away under the act. As already observed, the teaching of youth was sometimes one of the duties of the chantry priests, and it is probable that wherever there was a school and a chantry provided by the same foundation, the existence of the chantry was made a pretext for suppressing the whole endowment. Thus at Sandwich, in Kent, the chantry of St. Thomas was suppressed. One of the priests of this chantry was bound to teach the children of Sandwich to read. The citizens, feeling the loss of their school, raised money by subscription for making a new school, and Roger Manwood, afterwards chief baron of the Exchequer, was at the head of the subscription. This is the origin of the present free grammar-school of Sandwich. (*Journal of Education*, vol. x. p. 63.) King Edward founded a considerable number of grammar-schools, and the endowments were for the most part out of tithes formerly belonging to religious houses, or out of chantry lands given to the king in the first year of his reign. These schools are now generally called King Edward VI.'s Free Grammar-Schools; and many of them, such as Birmingham for instance, are now well endowed in consequence of the improved value of their lands. (Strype, *Ecclesiastical Memoirs*, ii. 101—103, ii. 423, iii. 222, vi. 495.)

CHAPEL (in French, *chapelle;* in Latin, *capella*), a word common to many of the languages of modern Europe, and used to designate an edifice of the lower rank appropriated to religious worship.

In England it has been used to designate minor religious edifices founded under very different circumstances and for different objects.

1. We have a great number of rural ecclesiastical edifices, especially in the north of England, where the parishes are large, which are not, properly speaking, churches, *ecclesiæ*, though they are sometimes so called, but are chapels, and not unfrequently called parochial chapels. Most of them are of ancient foundation, but still not so ancient as the time when the parochial distribution of England was regarded as complete, and the right to tithe and offerings was determined to belong to the rector of some particular church. In the large parishes a family of rank which resided at an inconvenient distance from the parish church would often desire to have an edifice near to them, for the convenience of themselves and their tenants. On reasonable cause being shown, the bishop would often yield to applications of this kind; but in such cases he would not suffer the rights of the parish church to be infringed; no tithe was to be subtracted from it and given to the newly erected foundation, nor was that foundation to be accounted in rank equal to the older church, or its incumbent otherwise than subordinate minister to the incumbent of the parish church. But the bishop generally, perhaps always, stipulated that there should be an endowment by the founder of such an edifice. Frequently in edifices of this class there was the double purpose of obtaining a place of easier resort for religious worship and ordinances, and a place in which perpetual prayers might be offered for the family of the founder. [CHANTRY.] Others of these rural chapels were founded by the parishioners. The population of a village, which lay remote from the church of the parish within whose limits it was included, would increase, and

thus the public inconvenience of having to resort to the parish church on occasion of christenings, churchings, marriages, and funerals, besides the services on the festivals, become great; they would therefore apply to the bishop in petitions, many of which are in the registers of the sees, setting forth the distance at which they lived, the impediments, constant or occasional, in the way of their ready resort to their parish church, as want of good roads, snow, the rising of waters, and the like, on which the ordinary would grant them the leave which they desired, reserving, however, as seems almost always to have been the case, whatever rights and emoluments had beforetime belonged to the parish church. In the parish of Halifax there are twelve of these chapels, all founded before the Reformation. In the parish of Manchester, and in most of the parishes of Lancashire, such subsidiary foundations are numerous. Those foundations of this class which could be brought within the description of superstitious foundations were dissolved by the act of 1 Edward VI. for the suppression of chantries; but while the endowment was seized, it not unfrequently happened that the building itself, out of the piety of the person into whose hands it passed in the sale of the chantry lands, or the devotion of the persons living near it, and long accustomed to resort to it, continued to be used for religious worship in its reformed state, and remains to this day a place of Christian worship, the incumbent being supported by the casual endowments of the period since the Reformation, and especially by what is called Queen Anne's Bounty, in which most of the incumbents of chapels of this class have participated.

2. The term chapel is used to designate those more private places for the celebration of religious ordinances in the castles or dwelling-houses of persons of rank. These chapels, says Burn, were anciently all consecrated by the bishop. We find in some of the oldest specimens of the castles of England some small apartment which has evidently been used for the purposes of devotion, and this sometimes in the keep, the place of last resort in the time of a siege. An instance of this is at Conisbrough, near Doncaster. But more frequently chapels of this kind were erected near to the apartments appropriated to the residence of the family. Most of the baronial residences, it is probable, had chapels of this kind. How splendid they sometimes were we may see in St. George's Chapel at Windsor and St. Stephen's Chapel at Westminster, both chapels of this class attached to the residences of our kings.

3. The chapels of colleges, as in the two universities; of hospitals, or other similar foundations.

4. Chapels for private services, chiefly services for the dead, in the greater churches, as the chapel of Saint Erasmus, and others, in the church of Westminster. Additions made to the parish churches for the support of chantries are sometimes called chantry chapels.

5. Places of worship of modern foundation, especially those in towns, are called chapels of ease, being erected for the ease and convenience of the inhabitants when they have become too numerous for the limits of their parish church. Most of these are founded under special Acts of Parliament, in which the rights and duties of the incumbent and the founders are defined. Under the Church Building Acts the commissioners may assign districts to chapels under care of curates. By 3 Geo. IV. c. 72, they may convert district chapelries into separate parishes. [BENEFICE, p. 343.]

6. The word chapel is pretty generally used to denote the places of worship erected by various sects of Dissenters under the Act of Toleration, though the Quakers and some of the more rigid Dissenters of other denominations, out of dislike to the nomenclature of an ecclesiastical system which they do not approve, prefer to call such edifices by the name of meeting-houses. The name chapel is now also generally given, by Protestants at least, to the Roman Catholic places of worship.

CHAPLAIN (*capellanus*, a word formed from the middle Latin, *capella*, chapel). A chaplain is properly a clergyman officiating in a chapel, in contradistinction to one who is the incumbent of a parish church. But it now generally de-

signates clergymen who are either (1) residing in families of distinction and actually performing religious services in the family; or (2) who are supposed to be so, though not actually so engaged. This fiction proceeds on the assumption that every bishop and nobleman, with some of the great officers of state, have each their private chapel, to which they nominate a priest, or more than one. Certain privileges respecting the holding of benefices belonged to these chaplains, by reservation out of the Act against Pluralities, 21 Henry VIII. c. 13, which were restricted by 57 Geo. III. c. 59; and by 1 & 2 Vict. c. 106, both these acts were repealed so far as they related to the subject of pluralities. By 21 Henry VIII. the number of chaplains which noblemen and other persons may nominate was limited: an archbishop may nominate eight; a duke or a bishop, six; a marquis or earl, five; a viscount, four; a baron, a knight of the garter, or the lord chancellor, three; the treasurer of the king's house, the comptroller of the king's house, the clerk of the closet, the king's secretary, the dean of the chapel, the almoner, and the master of the rolls, may nominate each two; the chief justice of the King's Bench and the warden of the Cinque Ports, each one; a duchess, marchioness, countess, and baroness, being widows, are allowed to nominate each two.

The Speaker of the House of Commons appoints his chaplain, who reads prayers daily at the House before business commences. In the House of Lords prayers are read by the bishop last raised to the episcopal bench.

A chaplain is appointed to each of her Majesty's ships when in active service. He must have been regularly ordained, and a graduate of Oxford, Cambridge, Dublin, or Durham, and not above the age of thirty-five. He undergoes an examination by some competent person appointed by the Admiralty, and must produce testimonials of good moral and religious conduct from two beneficed clergymen. The pay of a chaplain is 12*l.* 5*s.* per month for ships of all rates, and the half-pay is 5*s.* or 10*s.* a day, according to length of service. In the army it is not necessary to appoint a chaplain to each regiment, but there are a few clergymen appointed for the army under the name of Chaplains to the Forces.

The magistrates in quarter-sessions are required by 4 Geo. IV. c. 64, to appoint a chaplain to every prison within their jurisdiction. His salary is regulated by the number of persons which the prison is capable of containing, and must not exceed 150*l.* when the number of prisoners does not exceed fifty, nor 200*l.* if the number of persons which the prison can contain does not exceed one hundred; and the salary may be fixed at the discretion of the justices when the number of prisoners exceeds two hundred. A chaplain to a prison must be a clergyman of the Church of England, and be licensed by the bishop before he can officiate. The magistrates have the power of removing him from his office in case of misconduct and neglect, and of granting him an annuity when incapable from infirmity of performing his duties: his duties are pointed out by the above act, and amongst other things he is required to keep a journal. The duties of chaplains in jails are further regulated by 2 & 3 Vict. c. 56. They must not reside more than a mile from the prison. A chaplain in any jail in which the number of prisoners confined at one time during the three years preceding his appointment was not less than one hundred, cannot hold a benefice with cure of souls, or any curacy with the office of chaplain. An assistant chaplain or chaplains may be appointed in jails where the number of prisoners exceeds 250. The reports of chaplains are sometimes of great interest and throw light upon the causes of crime. Appended to the act 2 & 3 Vict. c. 56, are a number of questions, the answers to which are annually returned to the Secretary of State; and the 28th question relates to the duties of the chaplain.

Chaplains are required to be appointed to every County Lunatic Asylum.

The Poor Law Amendment Act (4 & 5 Will. IV. c. 76) empowers the Poor Law Commissioners to appoint paid officers of parishes and unions, and this includes chaplains. The act contemplates that the inmates of union workhouses, of whatever religious persuasion, should have

instruction in that persuasion. It is not peremptory to appoint a clergyman of the Church of England as chaplain, and the guardians may appoint a dissenting minister.

Both in jails and union workhouses licensed dissenting ministers are allowed to visit the inmates of their respective persuasions at reasonable times and under certain restrictions. By the Irish Poor Law Act (1 & 2 Vict. c. 56) three chaplains may be appointed for the union workhouses, one of the Established Church, one Roman Catholic priest, and one Protestant dissenter.

CHAPTER. The canons in the cathedral or conventual churches, when assembled, form what is called the chapter, *capitulum;* anciently the council of the bishop. Other religious communities, when assembled for business, sat in *chapter*. Attached to many cathedral and conventual churches are buildings for the meeting of the chapter, called chapter-houses. The buildings of this kind connected with the churches of Westminster and York are octagonal and of singular beauty.

The members of the College of Arms, that is, the king's heralds and pursuivants, are said to hold a *chapter* when they confer on the business of their office; and in like manner chapters of the order of the Garter are held.

CHARGE' D' AFFAIRES. [AMBASSADOR, p. 126.]

CHARITABLE USES. [USES, CHARITABLE.]

CHARTA MAGNA. [MAGNA CHARTA.]

CHARTE, from charta, "paper," was the name given to the letters of franchise granted by the kings of France during the middle ages to several towns and communities, by which they were put in possession of certain municipal privileges, such as the free election of their local magistrates and others. The word Charte is now used in France to signify the solemn acknowledgment of the rights of the nation made by Louis XVIII. on his restoration in 1814. The Charte is the fundamental law of the French constitutional monarchy. One article of this charte, having given occasion to a false interpretation, of which the ministers of Charles X. availed themselves to issue the ordonnances which gave rise to the revolution of July, 1830, was altered on the accession of Louis-Philippe, and it was clearly explained that "the king issues the necessary ordonnances and regulations for the execution of the laws, without having the power in any case to suspend the course of the law or to delay its execution." The "Charte de 1830," with this and one or two more modifications of minor importance, was sworn to by Louis-Philippe on the 9th of August, 1830. Since that date, a change has been made by the legislature in the constitution of the Chamber of Peers. The Peers are only for life, and the peerage is consequently not hereditary.

As France is so closely connected with England in the progress of constitutional history, we give an abstract of the "Charte de 1830." The general outline of the government of France bears a resemblance to our own, being an hereditary constitutional or limited monarchy. Its general constitution is defined in the charter granted by Louis XVIII. upon his restoration in A.D. 1814; modified in 1830, after the revolution which drove out the elder branch of the Bourbons; and farther modified since that time. The Charte, as modified after the revolution of 1830, and as it now stands, consists of sixty-seven articles, arranged under seven heads.

1st head, containing eleven articles.—*Droit public des Français* (*Public or national Rights of the French*).—This head provides for the equality of all Frenchmen in the eye of the law, their equal admissibility to civil and military employments, and their equal freedom from arrest otherwise than by legal process. It guarantees the full enjoyment of religious liberty; and while it recognises Catholicism as the religion of the majority of Frenchmen, it provides for the payment not only of the Catholic priesthood, but of the ministers of other Christian denominations, out of the public purse.* It ensures the liberty to all

* A law of Feb. 8, 1831, includes payment to the ministers of the Jewish religion.

Frenchmen of printing and publishing their opinions, and prohibits for ever the re-establishment of the censorship.* It abolishes the conscription; provides for the oblivion of all political offences previous to the restoration of the Bourbons; and guarantees the security of property (including the so-called "national domains" sold during the first Revolution), except when the public good, as made out in a legal manner, requires the sacrifice of individual property, in which case the owner must be indemnified.

2nd head, containing eight articles.—*Formes du Gouvernement du Roi* (*Limits of the Kingly Power*).—This head secures to the king the supreme executive power, the command of the army and navy, the right of making war and treaties of peace, alliance, and commerce; of nominating to all the offices of public administration; and of making all regulations needful for the execution of the laws, without the power of suspending them or dispensing with them. It provides that the legislative functions shall be exercised by the king, the Chamber of Peers, and the Chamber of Deputies; that every law must be agreed to by a majority of each chamber (the discussions and votes of which are to be free), and sanctioned by the king; that bills may originate with any of the three branches of the legislature, except money bills, which must originate in the Chamber of Deputies; and that a bill rejected by any branch of the legislature cannot be brought in again the same session. The civil list is fixed at the commencement of every reign, and cannot be altered during that reign.

3rd head, containing ten articles.—*De la Chambre des Pairs* (*Of the Chamber of Peers*).—This head provides for the assembling of this chamber simultaneously with the deputies, and renders every sitting illegal (except when the chamber is exercising its judicial power) unless it is held during the session of the deputies. The nomination of the peers is vested in the king (the princes of the blood are peers by right of birth); their number is unlimited, and their dignity is for life only; art. 23 of the "Charte," which related to the peerage, having been replaced by the law of 9th December, 1831, which abolished an hereditary peerage. This law is incorporated in the "Charte." It points out the class of persons from whom peers must be selected; and prohibits pensions being attached to the dignity of a peer. The ordonnance of nomination must mention the services for which the honour is conferred. The peers have no right of entry into the chamber under twenty-five years of age or of voting under thirty. The chancellor of France is president, or, in his absence, a peer nominated by the king. The sittings of the peers are public. The chamber takes cognizance of offences against the state. A peer can only be arrested by the authority of the chamber, and is not amenable to any other tribunal than the chamber in criminal matters.

4th head, containing sixteen articles.—*De la Chambre des Députés* (*Of the Chamber of Deputies*).—This head provides for the election of the deputies and the sittings of the chamber. The electors must be not less than twenty-five years of age and the deputies not less than thirty, and each must possess whatever other qualifications the law requires.* (The law of 19th April, 1831, for regulating the electoral franchise was passed in pursuance of a promise given in the Charte.) The deputies are elected for five years, and one-half of the deputies for each department must have their political domicile in it. The chamber elects its own president at the opening of each session. Its sittings ordinarily are public: but any five members can require that it form itself into a secret committee. Bills introduced by the government are discussed

* The law of Sept. 9, 1835, restrains the freedom of the press by several severe enactments.

* The deputies are all chosen by the departments; or, to borrow the language of our own institutions, they are all "county members;" and the electoral qualification consists in the payment of 200 francs direct taxes. The qualification of a deputy is the payment of 500 francs. The votes are given by ballot, both by electors and by the deputies in the chambers. The whole number of deputies is now 459, having been increased within the last few years from 430.

in separate *bureaux*, or committees. No tax can be levied without the consent of both chambers. The land-tax (*impôt foncier*) can be granted only year by year; other taxes may be voted for several years. The king convokes the two chambers, and prorogues and dissolves that of the deputies, but in the case of dissolution he must assemble a new one within three months. All members are free from arrest for debt during the session and for six weeks before and after, and from arrest on a criminal charge during the session, unless taken in the act or arrested by permission of the chamber.

5th head, containing two articles.—*Des Ministres* (*Of the Ministers*). — They may be members of either chamber; and they have also the right of entry into the other chamber, in which they can claim to be heard. The deputies may impeach the ministers; the peers alone have the right to try them.

6th head, containing twelve articles.—*De l'Ordre Judiciaire* (*Of the Administration of Justice*).—This head provides for the continuance of the previously existing institutions, including trial by jury, until properly modified by law; the publicity of criminal proceedings (except in particular cases); the non-removability of the judges, who are appointed by the king (the justices of peace, who are also appointed by the king, are however removable); and the right of the king to remit or commute the penalty imposed. It prohibits the confiscation of goods; the creation of special commissions or tribunals; and the withdrawal of any from the jurisdiction to which he is legally subject.

7th head, containing eight articles.—*Droits particuliers garantis par l'Etat* (*Individual Rights guaranteed by the State*).—Among other things, this head renders inviolable all engagements with the public creditor; provides for the government of the colonies by particular laws; and requires the king and his successors, on their accession, to swear to the faithful observance of the constitutional charter.

CHARTER. This word is from the Latin *charta*, a word of uncertain origin: the Greek form of the word is *chartes* (χάρτης). Charta appears to have signified writing material made of papyrus. The term was afterwards applied not only to the materials for writing, but to the writing itself, as to a letter or the leaf of a book. In English law it was used to denote any public instrument, deed, or writing, being written evidence of things done between man and man, and standing as a perpetual record. (Bracton, lib. 2, c. 26.) Among the Saxons such instruments were known as *gewrite*, or writings.

Charters are divided into—I. charters of the crown, and II. Charters of private persons.

I. Royal charters were used at a very early period, for grants of privileges, exemptions, lands, honours, pardon, and other benefits that the crown had to confer; and thus the term became restricted to such instruments as conferred some right or franchise. These instruments did not differ in form from letters patent, being usually addressed by the king to all his subjects, and exposed to open view, with the great seal pendent at the bottom; but such as contained grants of particular kinds were distinguished by the name of charters. Thus as giving was the object of a charter, the term became very popular, and was used in a more extended sense, to denote laws of a popular character.

Whatever may have been the prerogatives and legislative authority of the kings of England, it is certain that from the earliest times there were many rights and liberties which by the law of the land belonged to the people. As these were often restrained and violated, nothing was more acceptable to the nation than a formal recognition of them by the crown: and the popular name of charter was applied to those written laws by which the kings from time to time confirmed or enlarged the liberties of the people. Such laws were regarded not only as concessions from the king, but as contracts between man and man—between the king and his subjects; while, at the same time, they were promulgated as the legislative acts of the sovereign authority in the state.

The charter of William the Conqueror,

for observing the laws throughout England, was in the nature of a public law. It settled the religion of the state and provided for its peace and government, for the administration of justice, the punishment of criminals, and the regulation of markets; it confirmed the titles to lands, and the exemption of the tenants in chief of the crown from all unjust exaction and from tallage. The words are those of a lawgiver appointing and commanding; "*statuimus*," "*volumus et firmiter precipimus*," "*interdicimus*," "*decretum est*," are the forms of expression by which matters are ordered or prohibited. (*Fœdera Rec. Comm. Ed.*, vol. i. p. 1.)

The charters of liberties granted by Henry I., Stephen, Henry II., John, Henry III., and Edward I., are all, more or less, in the nature of public laws, either making new provisions, or confirming, enlarging, and explaining existing laws, and relate to the freedom and good government of the people, and all the most important interests of the country. Some of them are still regarded as authoritative declarations of the rights and privileges which the people of England have enjoyed for centuries.* So valid and binding were the royal charters esteemed as laws, that in the 37 Henry III. (A.D. 1253), in the presence of the king, several of the first nobles, "and other estates of the realm of England," the archbishop and bishops excommunicated and accursed all who should violate or change "the church's liberties or the ancient approved customs of the realm, and chiefly the liberties contained in the charters of the common liberties and of the forest, granted by our lord the king." In those times no sanction more solemn could have been given to the authority of any law. It was intended chiefly as a check upon the king himself, whose power had been restrained by the popular concessions made in the charters of liberties, but it was also directed against all his subjects who should violate the liberties of the people. [MAGNA CHARTA.]

These charter-laws, though often expressed to have been made by the advice of the king's council, implied an absolute legislative power vested in the crown; and as royal prerogative became restrained and the public liberties enlarged, legislation by charter was gradually superseded by the statutes and ordinances made in Parliament. During the reigns of Henry III. and Edw. I. laws were promulgated in both forms; but since that time statutes and ordinances have been the only records of legislation—not differing materially, at first, either in form or in the nature of the authority from which they emanated, from the charters of earlier reigns, but gradually assuming their present character as acts agreed to by the entire legislature.

But notwithstanding the discontinuance of the practice of promulgating general laws by royal charter to bind the whole kingdom, the exercise of prerogative, by means of charters, has partaken of a legislative character throughout the entire history of the British government. Some of the most ancient and important of these were charters to boroughs and municipal bodies, conferring immunities and franchises, of which the greatest was that of sending representatives to parliament. There are still extant municipal charters of the Saxon kings, and of the Norman kings after the Conquest, conferring various rights upon the inhabitants of boroughs, of which an exclusive jurisdiction was always one; but the first charter of incorporation to any municipal body appears to have been granted in 1439, in the reign of Henry VI., to Kingston-upon-Hull; although, in the absence of prior charters, it has been usual to presume that charters confirming existing usages had been lost.

But though the king's charters have conferred upon boroughs the right of sending members to parliament, it was held in several cases, by the House of Commons, that the right of voting by the common law, could not be varied by charters from the crown. (Glanville's *Reports*, p. 47, 63, 70.) Between the reigns of Henry VIII. and Charles II.

* They are printed at length in the first volume of the 'Statutes of the Realm,' published by the Record Commissioners. With the exception of one charter in the 25th Edw. I., they are all in the Latin language.

no less than 180 members were added to the House of Commons by royal charter, the last borough upon which that right was conferred, in this manner, having been Newark, in 1673. Several of these were ancient boroughs which had ceased to send members, and whose rights were thus restored by charter; while some towns, expressly created boroughs by charter, did not send members to parliament for centuries afterwards, as Queenborough, for example, to which a charter was granted in 1368, but which did not return members until 1578. Hence it has been argued that, notwithstanding the practice of later reigns, the charter of the crown alone was not sufficient in law to entitle a *town* to send members to parliament, although expressly created a borough, to which, by the common law, the right of sending members was incident. (Merewether and Stephen's *History of Boroughs and Municipal Corporations*, Introduction, and pp. 664, 1256, 1774, &c.) This view derives confirmation from the acknowledged law that the crown was unable, by charter, to exempt a borough from returning members, since that right was always held to be exercised for the benefit of the whole realm, and not for the advantage of the particular place. (Coke, 4th Inst. 49.) Upon these grounds a charter of exemption to the citizens of York was declared void by act of parliament, 29 Henry VI. c. 3. But as parliamentary representation has, at length, been comprehensively arranged for the whole kingdom by the Reform Acts, the legal effect of royal charters upon the elective franchise has become a question merely of historical interest. The peculiar rights of corporations have also been determined by the Municipal Corporations Act; but a power has been reserved to the crown, with the advice of the Privy Council, to grant charters of incorporation to other towns, upon the petition of the inhabitants, and to extend to them the provisions of the Municipal Corporations Acts (5 & 6 Will. IV. c. 76, § 141). [MUNICIPAL CORPORATIONS.]

Charters were formerly granted by the crown, establishing monopolies in the buying, selling, making, working, or using certain things; an injurious practice, contrary to the ancient and fundamental laws of the realm, which was abolished by the act 21 James I. c. 3. [MONOPOLY.]

The crown has ever exercised, and still retains, the prerogative of incorporating universities, colleges, companies, and other public bodies, and of granting them, by charter, powers and privileges not inconsistent with the law of the land. But as the most considerable bodies ordinarily require powers which no authority but that of parliament is able to confer, such corporations as the East India Company and the Bank of England, which were originally established by royal charter, have long since derived their extraordinary privileges from acts of parliament, as well as other public companies which have been incorporated in the first instance by statute.

But the largest powers now conferred by royal charter are those connected with the colonies and foreign possessions of the crown. Whenever a new country is obtained by conquest or treaty, the crown possesses an exclusive prerogative power over it, and by royal charters may establish its laws and the form of its government; may erect courts of justice, of civil and criminal jurisdiction, and otherwise provide for its municipal order, for the raising its revenue, and the regulation of its commerce. (Chitty, *On Prerogatives*, c. iii.) This sovereign power, however, is always subject to the ultimate control of parliament; and even if deputed to a legislative assembly, or other local government, possessing rights and liberties defined by charter, the crown cannot recall the charter, and govern by any laws inconsistent with its provisions, or at variance with the common law.

II. Charters of private persons are the title-deeds of lands, many of which are the ancient grants of feudal lords to their tenants. These pass with the land as incident thereto, and belong to him who has the inheritance; or, if the land be conveyed to another and his heirs, the charters belong to the feoffee. A charter of the crown, granted at the suit of the grantee, is construed most beneficially for the crown, and against the party; but a private charter is construed most strongly

against the grantor. (Fleta, lib. iii. c. 14; Comyn's *Digest*, tit. Charters; Coke, 1*st Inst.* 6 *a*, 7 *a*, 2*nd Inst.* 77; Cowel, *Law Dictionary;* Blackstone and Stephen's *Commentaries;* Preface to *Statutes of the Realm*, &c.)

CHARTER PARTY. [SHIPS.]

CHARTISTS, the name given to a political party in this country, who propose extensive alterations in the representative system, as the most direct means of attaining social improvement, and whose views are developed in a document called the "People's Charter." The principal points of this proposed charter are, universal suffrage, vote by ballot, annual parliaments, the division of the country into equal electoral districts, the abolition of property qualification in members and paying them for their services. The principles of the charter and the means of carrying them into effect have also been embodied in the form of a bill. It was prepared in 1838 by six members of the House of Commons, and six members of the London Working Men's Association; and the following are the most important of its enactments:—I. The preparers of the Bill allege the low state of public feeling as an apology for not admitting women to the franchise, and it is therefore only provided that every male inhabitant be entitled to vote for the election of a member of the Commons' House of Parliament, subject however to the following conditions:—1. That he be a native of these realms, or a foreigner who has lived in this country upwards of two years, and been naturalized. 2. That he be twenty-one years of age. 3. That he be not proved insane when the lists of voters are revised. 4. That he be not convicted of felony within six months from and after the passing of this act. 5. That his electoral rights be not suspended for bribery at elections, or for personation, or for forgery of election certificates, according to the penalties of this act. II. That the United Kingdom be divided into 300 electoral districts, so as to give uniform constituencies of about 20,000 voters each. III. That the votes be taken by ballot. IV. That a new Parliament be elected annually; that the elections take place on the same day in all the districts; and that electors vote only for the representative of the district in which they are registered. V. That no other qualification be required for members than the choice of the electors. VI. That every member be paid 500*l.* a year out of the public treasury for his legislative services; and that a register be kept of the daily attendance of each member.

There is nothing new in the principles or details of the People's Charter. They have, either separately, or some one or other of them in conjunction, been a prominent subject of discussion at various intervals within the last seventy years. In 1780 the Duke of Richmond introduced a bill into the House of Lords for annual parliaments and universal suffrage. In the same year the electors of Westminster appointed a committee to take into consideration the election of members of the House of Commons, and in their report they recommended the identical points which now constitute the main features of what is called the People's Charter. The Society of the Friends of the People, established in 1792, three years afterwards published a declaration which recommended a very large extension of the suffrage. In seasons of national distress, the amendment of the representative system has always been warmly taken up by the people of this country.

In 1831 the wishes of a large mass of the middle classes were realized and satisfied by the passing of the Reform Act. A season of political repose, and, as it happened also, of commercial prosperity, followed the excitement which preceded the passing of that measure. A victory had been gained, and the people waited for the benefits which they were to derive from it. In the next period of distress which arose, the amended state of the representative system and the advantages which it had brought were narrowly scanned; and the consequence was, the gradual formation of a party who were dissatisfied with its arrangements, and sought to attain the ends of political and social good by a more extensive change. This is briefly the origin of Chartism and of the Peo-

ple's Charter. The middle classes were, however, well satisfied on the whole with the overthrow of the rotten boroughs and the enfranchisement of the large towns, and therefore the Chartists stood alone, and began to regard them with a feeling of hostility. Chartists were sometimes found, as in all other parties, ready to assist the party which differed most widely from them, with the object of thwarting the political objects which the middle classes had at heart. In 1838 they had become a large party and embraced a great number of the working classes employed otherwise than in agriculture. The number of signatures attached to the petition presented at the commencement of the session of 1839 in favour of the People's Charter was upwards of one million and a quarter. Unfortunately the idea began to be entertained amongst a certain class of the Chartists, that physical force might be justifiably resorted to if necessary for obtaining political changes; and the party became divided into the Physical Force Chartists and the Moral Force Chartists. The former became implicated in disturbances which took place at various times in several parts of the country; and many persons of this class never having had correct views respecting the wages of labour, it appeared as if they had adopted the cry of "a fair day's wages for a fair day's work" as an additional point of the People's Charter. The disturbances in 1842 in the midland and northern counties were to some extent encouraged by the less intelligent of the Physical Force Chartists. At the close of 1841, however, an attempt was made to combine the middle classes with the Chartists in their attempt to obtain an extension of the suffrage. Early in 1842 a Complete Suffrage Union was formed at Birmingham, and in April of the same year a Conference, consisting of eighty-seven Delegates, was assembled at Birmingham, which sat for four days; three of which were spent in agreeing upon a basis of union between the middle and working classes, and the last day in adopting plans of practical organization. The six points of the People's Charter were adopted by the Conference, and the details were left for settlement to a future Conference. It was resolved also at this conference to establish a National Complete Suffrage Union. The proposed National Conference commenced its meetings in December, 1842, and was attended by 374 delegates. Here a rupture took place between the Chartists and the Complete Suffrage party, and the latter were outvoted on the question of adopting the People's Charter instead of the Complete Suffrage Bill. The minority, however, proceeded to act upon their views as developed in the Complete Suffrage Bill. This Bill does not contain any disqualifying clauses. In other respects it differs from the People's Charter only in matters of detail. These are the only two plans connected with the extension of the franchise which are at present supported by any large class in this country. The Chartists and the Complete Suffragists are only nominally distinct parties; but the former may be characterized as possessing a greater hold on the working classes than the Complete Suffragists, whose ranks are chiefly recruited from the middle classes: their objects, however, are so similar, that they may at any time unite without any sacrifice of principle.

CHASE. [FOREST.]

CHATTELS (in Law Latin, Catalla). This term comprehends all moveable property, and also all estates in land which are limited to a certain number of years or other determinate time. All moveable goods, as horses, plate, money, and the like, are called Chattels Personal. Estates or interests in land, which are comprehended in the term chattels, are called Chattels Real. "Goods and Chattels" is a common phrase to express all that a man has, except such estates in land as are freehold estates; but the word chattels alone expresses the same thing as "goods and chattels." The word goods is merely a translation of the Latin word Bona, which was used by the Romans to express all property, and generally all that a man was in any way entitled to. (*Dig.* 50, tit. 16, s. 49.) The nature of personal property in England is further considered under PROPERTY. Chattels of each description pass to the personal representatives of the deceased proprietor, and are

comprehended under the general term "Personal Property." The law as to chattels is now, owing to the great increase of wealth, and particularly of moveables, of equal importance with the law relating to land; but under the strict feudal system, and the laws to which it more immediately gave rise, chattels (including even terms for years) were considered of small importance in a legal point of view, and, indeed, prior to the reign of Henry VI., were rarely mentioned in the law treatises and reports of the day. (Reeve, *Hist. Eng. Law*, 369.) Many articles which are properly chattels, owing to their intimate connexion with other property of a freehold nature, and being necessary to its enjoyment, descend therewith to the heir, and are not treated as chattels. Thus, for instance, the muniments of title to an estate of inheritance, growing trees and grass, deer in a park, and such fixtures as cannot be removed from the freehold without injury to it, are not chattels, because they pass to the heir. In the hands of a person however who has a limited interest in such things they become his chattels, and pass to his executor. Chattels, except so far as they may be heir-looms, cannot be entailed, though they may be limited so as to vest within twenty-one years after the death of a person or persons in being. They are not within the Statute of Uses, inasmuch as the proprietor of a chattel is said to be *possessed* of it, not *seised*, which is the word used in that statute. The same forms were not required in passing a chattel by devise, as in the case of real property, and a will of chattels might also be made at an earlier age than one which disposed of real estate; at fourteen years of age by a male, and twelve by a female. But this is now altered by 1 Vict. c. 26, and no person under twenty-one years of age can now dispose of anything by will. Chattels do not go in succession to a corporation sole, except only in the cases of the king and the chamberlain of the city of London. (Co. Litt.; Blackstone, *Comm.*)

CHEQUE, an order on a banker by a person who has money in the bank, directing him to pay a certain sum of money to the bearer or to a person named in the cheque, which is signed by the drawer. Cheques are immediately payable on presentment. They are not liable to stamp-duty, and are therefore limited in their functions in order to prevent their circulating as bills of exchange. They must, for example, be payable on demand, without any days of grace, and must be drawn on a banker within fifteen miles of the place where they are issued. The place of issue must therefore be named, and they must bear date on the day of issue. A cheque should be presented on the day which it is received, or within a reasonable time. One of the first rules to be observed in writing a cheque is to draw it in a business-like manner, so as to prevent a fraudulent alteration in the amount, for if otherwise the drawer may be liable. A "crossed" cheque is an ordinary cheque with the name of a particular banker written across the face of it for security, or it may be crossed simply "& Co."; and in this case it will only be paid through that banker. If presented by any other person, it is not paid without further inquiry. The 'Bankers' Magazine' for Oct. and Nov. 1844, and Jan. and Feb. 1845, contains some valuable information on the Law of Cheques.

One of the great advantages of a banking account is the convenience of drawing cheques. A person is thus relieved of the necessity of keeping ready money in his hands, and a cheque is some evidence of payment in the absence of a proper receipt. The Bank of England allows cheques to be drawn for sums of 5*l.*, but a few years ago it allowed no cheques under 10*l.*

CHICORY. [ADULTERATION.]

CHIEF JUSTICE. [COURTS.]

CHILD-KILLING. [INFANTICIDE.]

CHILD-STEALING. [ABDUCTION.]

CHILTERN HUNDREDS. A portion of the high land of Buckinghamshire is known by the name of the Chiltern Hills. "Formerly these hills abounded in timber, especially beech, and afforded shelter to numerous banditti. To put these down, and to protect the inhabitants of the neighbouring parts from their depredations, an officer was appointed under the crown, called the steward of the Chiltern Hundreds." (*Geog. of Great Britain*,

by the Society for the Diffusion of Useful Knowledge.) The duties have long since ceased, but the nominal office is retained to serve a particular purpose. A member of the House of Commons, who is not in any respect disqualified, cannot resign his seat. A member therefore who wishes to resign, accomplishes his object by applying for the stewardship of the Chiltern Hundreds of Stoke, Desborough, and Bodenham, which, being held to be a place of honour and profit under the crown, vacates the seat, and a new writ is in consequence ordered. This nominal place is in the gift of the chancellor of the exchequer. As soon as the office is obtained it is resigned, that it may serve the same purpose again. Another office which is applied for under similar circumstances, is the stewardship of the manors of East Hendred, Northstead, and Hempholme. The offices which have been held to vacate seats may be collected from the several General Journal Indexes, tit. "Elections."

In the session of 1842 a committee of the House of Commons was appointed "to inquire whether certain corrupt compromises had been entered into in specified boroughs, for the purpose of avoiding investigation into gross bribery, alleged to have been practised in them;" and a member for one of these boroughs (Reading) having applied to the chancellor of the exchequer, requesting that the stewardship of the Chiltern Hundreds might be conferred on him, the chancellor of the exchequer, who anticipated similar applications from members of some of the other boroughs implicated, decided upon refusing the appointment. The reasons he alleged for this refusal, in a letter addressed to the member for Reading, were as follows:—"Under ordinary circumstances I should not feel justified in availing myself of the discretion vested in me in order to refuse or delay the appointment for which you have applied, when sought for with a view to the resignation of a seat in parliament. But after the disclosures which have taken place with respect to certain boroughs, of which Reading is one, and after the admission of the facts by the parties interested, I consider that by lending my assistance to the fulfilment of any engagement which may have been entered into as arising out of any such compromise, I should, in some sort, make myself a party to transactions which I do not approve, and of which the House of Commons has implied its condemnation. I feel, moreover, that by a refusal on my part of the means by which alone such engagements can be fulfilled, I afford the most effectual discouragement to the entering into similar compromises in future, and thus promote, so far as is in my power, the intentions of the House of Commons."

CHIMNEY-SWEEPER, a person whose trade it is to cleanse foul chimneys from soot. The actual sweepers were formerly boys, of very tender age, who were taught to climb the flues, and who, from the cruelties often practised upon them by their masters, had for the last half-century become objects of particular care with the legislature. The first and chief act by which regulations concerning them were enforced was the 28 Geo. III. c. 48. In 1834 the act 4 & 5 Will. IV. c. 35, was passed for the better regulation of Chimney-sweepers and their Apprentices, and for the safer Construction of Chimneys and Flues. From that date no child who was under ten years of age could be apprenticed to a chimney-sweeper. A particular form of indenture of apprenticeship is required in the case of chimney-sweeps. In 1840 another act (3 & 4 Vict. c. 85) was passed, 7th August, for the regulation of chimney-sweepers and chimneys. This act annulled existing indentures of chimney-sweepers' apprenticeship, where the apprentice was under sixteen, and prohibited in future the binding of any child under that age. Any person who compels, or knowingly allows, any young person under the age of twenty-one, to ascend or descend a chimney, or enter a flue, for the purpose of sweeping or extinguishing fire, is liable, under this act, to a penalty not exceeding 10*l.* and not less than 5*l.* That part of the act 3 & 4 Vict. c. 85, which related to chimneys is repealed by 7 & 8 Vict. c. 84 (the Metropolitan Buildings Act), which substitutes new regulations as to the dimensions and construction of chimneys.

The number of persons returned as chimney-sweepers in 1841 was 4620 in England, 56 in Wales, and 331 in Scotland. Two-fifths (1974) were under twenty years of age.

About the beginning of the present century, a number of individuals joined in offering considerable premiums to any one who would invent a method of cleansing chimneys by mechanical means, so as to supersede the necessity for climbing-boys. Various inventions were in consequence produced, of which the most successful was that by Mr. George Smart. The principal parts of the machine are a brush, some hollow tubes which fasten into each other by means of brass sockets, and a cord for connecting the whole.

CHIVALRY, COURT OF. [COURTS.]

CHURCH BRIEF. [BRIEF.]

CHURCH-RATES are rates raised, by resolutions of a majority of the parishioners in vestry assembled, from the parishioners and occupiers of land within a parish, for the purpose of repairing, maintaining, and restoring the body of the church and the belfry, the churchyard fence, the bells, seats, and ornaments, and of defraying the expenses attending the service of the church. The spire or tower is considered part of the church. The duty of repairing and rebuilding the chancel lies on the rector or vicar, or both together, in proportion to their benefices, where there are both in the same church. But by custom it may be left to the parishioners to repair the chancel, and in London there is a general custom to that effect.

The burden of repairing the church was anciently charged upon tithes, which were divided into three portions, one for the repair of the church, one for the poor, and one for the ministers of the church. Pope Gregory had enjoined on St. Augustine such a distribution of the voluntary offerings made to his missionary church in England; and when Christianity came to be established through the land, and parish churches generally erected, and when the payment of tithes was exacted, the tithes were ordered to be distributed on Pope Gregory's plan. Thus, one of Archbishop Ælfric's canons, made in the year 970, is as follows:—"The holy fathers have also appointed that men should give their tithes to the church of God, and the priests should come and divide them into three parts, one for the repair of the church, and the second for the poor, but the third for the ministers of God, who bear the care of that church." (Wilkins, *Concilia*, i. 253.) The same division of tithes was enacted by King Æthelred and his councillors in Witenagemot assembled, in the year 1014. A portion of the fines paid to churches in the Anglo-Saxon times for offences committed within their jurisdictions was also devoted to church repairs. The bishops were likewise required to contribute from their own possessions to the repair of their own churches. A decree of King Edmund and his councillors, in 940, headed "Of the repairing of churches," says that "Each bishop shall repair God's house out of what belongs to him, and shall also admonish the king to see that all God's churches be well provided, as is necessary for us all." (Schmid, *Gesetze der Angel-Sachsen*, i. 94.) One of King Canute's laws says, "All people shall rightly assist in repairing the church;" but in what way it is not said. There is no pretence however for interpreting this law of Canute's as referring to anything like church-rate. A payment to the Anglo-Saxon church, called cyric-sceat (church scot), has been erroneously identified with church-rate by some writers. This was a payment of the first-fruits of corn-seed every St. Martin's day (November 11), so much for every hide of land, to the church; and the laws of King Edgar and King Canute direct all cyric-sceat to be paid to the old minster. (Schmid, i. 99, 165.) Cyric-sceat was otherwise called cyric-amber, amber being the measure of payment.

Churches continued to be repaired with a third of the tithes after the Norman conquest, and to as late as the middle of the thirteenth century. How the burden came to be shifted from the tithes to the parishioners is involved in much obscurity. The following conjectural sketch of the rise of church-rates is from a pamphlet by Lord Campbell:—"Probably the burden was very gradually shifted to

the parishioners, and their contributions to the expense were purely voluntary. The custom growing, it was treated as an obligation, and enforced by ecclesiastical censures. The courts of common law seem to have interposed for the protection of refractory parishioners till the statute of Circumspecte Agatis, 13 Ed. I., which is in the form of a letter from the king to his common law judges, desiring them to use themselves circumspectly in all matters concerning the bishop of Norwich and his clergy, not punishing them if they held plea in court Christian of such things as are merely spiritual, as "si prælatus puniat pro cimeterio non clauso, ecclesia discooperta vel non decenter ornata." Lord Coke observes, "that some have said that this was not a statute, but made by the prelates themselves, yet that it is an act of parliament." In the printed rolls of parliament, 25 Ed. III. No. 62, it is called an ordinance; but in the statute 2 & 3 Ed. VI. c. 13, § 51, it is expressly styled a statute, and it must now clearly be taken to be the act of the whole legislature. From the year 1285 therefore the bishops were authorized to compel the parishioners by ecclesiastical censures to repair and to provide ornaments for the church." (*Sir John, now Lord, Campbell's Letter to Lord Stanley on the Law of Church-Rates*, 1837.) But for long after the existence of the custom of making the parishioners contribute to the repairs of the church, and after the statute *Circumspecte Agatis*, the original obligation on the clergyman to repair out of the tithes was remembered. Lord Campbell quotes in the same pamphlet a passage from a MS. treatise in the Harleian Collection, written in the reign of Henry VII., by Edward Dudley, a privy councillor of that king, which thus lays down the law for appropriation of the incomes of the clergy:—"One part thereof for their own living in good household hospitality; the second in deeds of charity and alms to the poor folk, and specially within their diocese and cures, where they have their living; and the third part thereof for the repairing and building of their churches and mansions." Lyndwode, who wrote in the fifteenth century, says that by the common law the burden of repairing the church is on the rector, and not on the laity. "But certainly," he adds, "by custom even the lay parishioners are compelled to this sort of repair; so that the lay people is compelled to observe this laudable custom." (*Const. Legatin.* 113.)

Church-rates are imposed by the parishioners themselves, at a meeting summoned by the churchwardens for that purpose. Upon the churchwardens, conjointly with the minister, devolves the care of the fabric of the church and the due administration of its offices. With a view to provide a fund for such expenses, it is the duty of the churchwardens to summon parish-meetings for the purpose of levying rates; and if they neglect to do so, they may be proceeded against criminally in the ecclesiastical courts. They may also be punished by the ecclesiastical courts for neglecting to make repairs for which money has been provided by the parish; but if they have no funds in hand, and if they have not failed to call the parishioners together, they cannot be punished. A mandamus also is grantable to compel the churchwardens to call a meeting. If the parish fail to meet, the churchwardens then constitute the meeting, and may alone impose a rate; but if the parish should assemble, it rests with the parishioners themselves to determine the amount of the rate, or to negative the imposition of a rate altogether.

The repair of the parish church and the provision of the necessaries for divine service are thus entirely at the option of the majority of the parishioners assembled. Before the Reformation the parishioners could be punished in the ecclesiastical courts for failing to repair the parish church; and the punishment was, to place the parish under an interdict, or sentence of excommunication, by which the church was shut up, the administration of the sacraments suspended, and any parishioner who died was buried without bell, book, or candle. But there is now no means of compelling the parishioners to provide church-rates. There is no remedy by mandamus: the Court of King's Bench will grant a mandamus, as has been already said, directing churchwardens to call a parish meeting, but not

to compel parishioners to make a rate. The ecclesiastical courts cannot make a rate, nor appoint commissioners to make one. An *obiter dictum* of Chief Justice Tindal in delivering the judgment of the Court of Exchequer Chamber in error in the Braintree case, has lately suggested the possibility of proceeding criminally against parishioners for voting against a a rate, or absenting themselves from a meeting called to consider of a rate, where repairs are needed. In Braintree parish, after the parishioners on meeting had refused to make any rate, the churchwardens had levied a rate of their own authority, and proceeded against a parishioner for refusing to pay his portion. The Court of Exchequer Chamber, to which the churchwardens appealed against a prohibition issued by the Court of Queen's Bench, confirmed the prohibition, and declared the churchwardens' rate to be illegal. But in delivering the judgment of the court, Chief Justice Tindal made the following remark:—"It is obvious that the effect of our judgment in this case is no more than to declare the opinion of the court, that the churchwardens have in this instance pursued a course not authorized by law, and consequently all the power with which the spiritual court is invested by law to compel the reparation of the church is left untouched. If that court is empowered (as is stated by Lyndwode, page 53, *voce sub pœna*, and other ecclesiastical writers) to compel the churchwardens to repair the church by spiritual censures; to call upon them to assemble the parishioners together, by due notice, to make a sufficient rate; to punish such of the parishioners as refuse to perform their duty in joining in the rate by excommunication, that is, since the statute of 53 Geo. III. c. 127, by imprisonment, and under the same penalty to compel each parishioner to pay his proportion of the church-rate; the same power will still remain with them, notwithstanding the decision of this case." In December, 1842, some parishioners of St. George's, Colegate, Norwich, were articled in the Court of Arches for having wilfully and contumaciously obstructed, or at least refused to make, or join and concur in making, a sufficient rate for the repair of the church of the parish. The articles were admitted by Sir Herbert Jenner Fust, the judge of the Court of Arches; but on application to the Court of Queen's Bench the proceedings were stayed by prohibition. Church-rates depend, therefore, entirely on the will of a majority of the parishioners assembled: and this is obviously a state of things which, where dissenters from the established religion abound, may lead to parish churches being left to go to ruin.

The existing poor-rate of the parish is generally taken as the criterion for the imposition of the church-rate; but decisions as to poor-rates are not binding in cases of church-rates, and the proper test for church-rates is a valuation by competent judges, grounded on the rent the tenant would be willing to pay for the premises. All property in the parish is liable except the glebe-land of that parish, and the possessions of the crown when in the actual occupation of the crown; and places of public worship. Stock in trade is not generally rated for church repairs, but a custom may exist rendering it rateable in a particular parish. The ecclesiastical courts have the exclusive authority of deciding on the validity of a rate, and the liability of a party to pay it; but a ratepayer cannot by an original proceeding in those courts raise objections to a rate for the purpose of quashing it altogether. If he wishes to dispute it, he ought to attend at the vestry, and there state his objections; if they are not removed, he may enter a caveat against the confirmation of the rate, or refuse to pay his assessment. In the latter case, if proceeded against in the ecclesiastical court, he may in his defence show either that the rate is generally invalid, or that he is unfairly assessed. The consequence of entering a caveat is an appeal to the ecclesiastical judge, who will see that right is done.

A retrospective church-rate, or rate for expenses previously incurred, is bad. This has been often decided in the courts of common law and equity, and in the ecclesiastical courts. The reason is stated by Lord Ellenborough in the judgment of the court in Rex *v.* Haworth (12 East,

556):—"The regular way is for the churchwardens to raise the money beforehand by a rate made in the regular form for the repairs of the church, in order that the money may be paid by the existing inhabitants at the time, on whom the burden ought to fall." It has lately been decided by the Judicial Committee, in the case Chesterton *v.* Hutchins, reversing the decision of the Court of Arches, and confirming the previous decision of the Consistory Court, that a rate not retrospective on the face of it, but admitted to be partly retrospective, was bad.

Previously to 53 Geo. III. c. 127, the only mode of recovering church-rates from parties refusing to pay was by suit in the ecclesiastical court for subtraction of rate. By that statute, where the sum to be recovered is under 10*l.* and there is no question as to the validity of the rate, or the liability of the party assessed, any justice of the county where the church is situated may, on complaint of the churchwarden, inquire into the merits of the case, and order the payment. Against his decision there is an appeal to the quarter-sessions. By several statutes, principally the 58 Geo. III. c. 45, and 59 Geo. III. c. 134, acts passed for the promotion of building churches, the common-law powers of churchwardens have been varied, and extended so as to enable them to raise money on the security of church-rates, and to apply them for the enlargement, improvement, &c. of churches, and for the building of new ones, &c.

The levying of church-rates on dissenters, who are so numerous in this country, has caused so much irritation, and the frequently successful opposition of dissenters at vestry-meetings called to impose rates has rendered church-rates so precarious a resource, that various attempts have been made of late years to abolish them, and to substitute some more certain and less obnoxious provision for the repair of churches and the due celebration of divine worship. Lord Althorp, as chancellor of the exchequer in Lord Grey's government, brought in a bill for the abolition of church-rates in 1834, which proposed to charge the Consolidated Fund with 250,000*l.* a year, to be devoted to the repair of parish churches and chapels (including the chancel), and to be disbursed by commissioners after certificate from the quarter-sessions of the county in which the parish might lie, founded on a report by the county surveyor,—to place on the rector or lay impropriator, relieved of the duty of repairing the chancel, the burden of providing necessaries for the performance of divine service,—to leave the preservation of pews to the owners or occupiers, and to leave the provision and repair of bells, organs, and ornaments to voluntary contributions. This bill fell to the ground, principally owing to the opposition of dissenters, who viewed the substitution for church-rates of a charge on the public taxes as a mere shifting of the burden upon themselves, and objected altogether to being called upon to contribute to a church to which they did not belong. In 1837 Lord Melbourne's government made a second attempt to settle the question; and a bill was brought in by Mr. Spring Rice, chancellor of the exchequer, to abolish church-rates, and provide for the objects of them by a surplus created by a better management of the church lands held by the archbishops, bishops, and deans and chapters; these lands to be managed by commissioners, and 250,000*l.* a year to be the first charge on the surplus. The opposition of the church and of church lessees frustrated this measure, and no measure has since been brought forward by any government.

Lord Althorp stated, in introducing his measure, that the amount of church-rates annually levied was from 500,000*l.* to 600,000*l.*; and about 249,000*l.* was annually expended on the fabrics of churches. Mr. Spring Rice calculated that in 5000 parishes in England no church-rates are levied. There are endowments in many parishes for the repair of the church, which render church-rates unnecessary; and in many parishes arrangements have been made for voluntary subscriptions, to avoid squabblings between churchmen and dissenters, and the scandal of such disputes.

The Parliamentary Returns respecting local taxation issued in 1839 (No. 562) give the following particulars respecting church-rates in England and Wales for

the year ending Easter, 1839:—Total amount of rates and monies received by churchwardens, 506,812*l.*, of which 363,103*l.* was derived from the church-rates, and 143,709*l.* from other sources. The total sum expended was 480,662*l.*, and of this sum 215,301*l.* was expended in the repairs of churches. The debt secured on church-rates amounted to 535,236*l.* There is a more complete return for the year ending Easter, 1832, which shows some of the principal of the "other sources" alluded to in the return of 1839. In 1831-2 the total amount which the churchwardens received was 663,814*l.*, derived from the following sources:—Church-rates, 446,247*l.*; estates, &c., 51,919*l.*; mortuary or burial fees, 18,216*l.*; poor-rates, 41,489*l.*; pews and sittings, 39,382*l.*; other sources not stated, 66,559*l.* The payments by the churchwardens in the same year amounted to 645,883*l.*, and included 46,337*l.* for books, wine, &c.; salaries to clerks, sextons, &c., 126,185*l.*; organs, bells, &c., 41,710*l.*; and repairs of churches, 248,125*l.*

CHURCHWARDENS are parish officers, who by law have a limited charge of the fabric of the parish church, of the direction and supervision of its repairs, and of the arrangement of the pews and seats. Certain other duties are imposed upon them on particular occasions. There are usually two churchwardens in each parish, but by custom there may be only one. It is said by some authorities, that by the common law the right of choosing churchwardens is in the parson and the parishioners. This is however by no means universally the case, as a custom prevails in many parishes for the parishioners to choose both, and in some both are elected by a select vestry. The eighty-ninth canon of 1603 directs that "churchwardens shall be chosen yearly in Easter week by the joint consent of the minister and parishioners, if it may be; but if they cannot agree, the minister shall choose one and the parishioners another." It has however been questioned how far these canons are binding upon the laity, even in matters ecclesiastical.

The usual duties of churchwardens are, to take care that the churches are sufficiently repaired; to distribute seats among the parishioners, under the control of the ordinary; to maintain order and decorum in the church during the time of divine service; and to provide the furniture for the church, the bread and wine for the sacrament, and the books directed by law to be used by the minister in conducting public worship. In addition to these ordinary duties, the churchwardens are by virtue of their office overseers of the poor, under the statutes for the relief of the poor; they summon vestries; they are also required to present to the bishop all things presentable by the ecclesiastical laws, which relate to the church, minister, or parishioners. They act as sequestrators of a living. They are also required to perambulate the bounds of the parish. In large parishes there are sometimes officers called sidesmen (*synodsmen*) or questmen, whose business it is to assist the churchwardens in inquiring into offences and making presentments. Churchwardens and sidesmen were formerly required to take an oath of office before entering upon their respective duties; but by a recent statute, 5 & 6 Will. IV. c. 62, § 9, it is enacted that, in lieu of such oath, they shall make and subscribe a declaration before the ordinary (the bishop of the diocese, or the archdeacon, official, or surrogate) that they will faithfully and diligently perform the duties of their offices. This is done at the archdeacon's visitation. It is said by various old writers that the churchwarden might act before he was sworn; but 5 & 6 Will. IV. c. 62, requires that the declaration should be taken first. The old churchwardens usually act until the archdeacon's visitation, about the month of June, though their successors are appointed at Easter.

If churchwardens are guilty of any wilful malversation, or if they refuse to account to the parishioners at the termination of their period of service, they may be proceeded against summarily before the bishop by any parishioner who is interested, or the new churchwardens may maintain an action of account against them at common law; in which action the parishioners, other than such as receive alms, are admissible as witnesses. (3 Will. III. c. 11, § 12.) On the

other hand, in all actions brought against them for any thing done by virtue of their office, if a verdict be given for them, or if the plaintiff be nonsuited or discontinue, they are entitled to double costs by 7 Jas. I. c. 5, and 21 Jas. I. c. 12.

Under the 59th Geo. III. c. 12, § 17, churchwardens and overseers are empowered to take and hold lands in trust for the parish as a corporate body; and by a decision under this act, they can also take and hold any other lands and hereditaments belonging to the parish, the profits of which are applied in aid of the church-rate. (Burn's *Justice* and Burn's *Ecclesiastical Law*, tit. "Churchwardens.")

CINCINNA'TI, ORDER OF, an association established at the termination of the revolutionary war by the officers of the American army, which, in reference to the transition made by most of them from the occupation of husbandry to that of arms, took its name from the Roman Cincinnatus. The society was called an "order," and an external badge was provided of a character similar to those worn by the knights and other privileged orders of Europe. It was moreover provided that the eldest son of every deceased member should also be a member, and that the privilege should be transmitted by descent for ever. This principle of perpetuating a distinction soon became the object of attack. Judge Burke, of South Carolina, endeavoured, in a pamphlet, to show that it contained the germ of a future privileged aristocracy, and that it should not be allowed to develop itself. The society was publicly censured by the governor of South Carolina in his address to the Assembly, and by the legislatures of three states, Massachusetts, Rhode Island, and Pennsylvania. A correspondence ensued between General Washington and Mr. Jefferson concerning the institution in 1784, and Mr. Jefferson expressed himself altogether opposed to the principle of hereditary descent. The public disapprobation did not run less strongly in the same direction. At a meeting of the society soon afterwards, in Philadelphia, the hereditary principle and the power of adopting honorary members were abolished; but the society, in all other respects, was preserved. According to Mr. Jefferson, General Washington used his influence at the meeting in Philadelphia for its suppression, and the society would probably have been dissolved but for the return of the envoy whom they had despatched to France for the purpose of providing badges for the order, and of inviting the French officers to become members. As they could not well retract, it was determined that the society should retain its existence, its meetings, and its charitable funds. The order was to be no longer hereditary; it was to be communicated to no new members; the general meeting, instead of being annual, was to be triennial only. The badges were never publicly worn in America, but it was wished that the Frenchmen who were enrolled in the order should wear them in their own country. In some of the States the society perhaps still exists, and the members hold, or until lately held, triennial meetings. In others it has been allowed silently to expire. That of Virginia met in 1822, and transferred its funds (15,000 dollars) to Washington College. (Tucker's *Life of Jefferson*, vol. i. pp. 184-188.)

CINQUE PORTS. It is stated by Jeake ('Charters of the Cinque Ports'), that in one of the records of the town of Rye is a memorandum that "the five ports were enfranchised in the time of King Edward the Confessor;" the five ports here intended, the original *Cinque Ports* of the Normans, being the towns of Sandwich, Dover, Hythe, and Romney, on the coast of Kent, and Hastings on that of Sussex. Only three of these five ports being mentioned in the Domesday Survey, viz. Sandwich, Dover, and Romney, Lord Coke thence infers that at first the privileged ports were these three only.

Though some part of the municipal constitution of the individual ports may be anterior to the Norman invasion, yet the organization of the general body, as it has existed in later times, is plainly traceable to the policy of the Conqueror in securing, by every means, his communications with the Continent. These ports and their members occupy exactly the tract of

sea-coast of which, after the victory of Hastings, he showed most eagerness to possess himself, by sweeping along it with his army before he directed his march towards London; and the surrender into his hands of the castle of Dover, which is the centre of the Cinque Ports' jurisdiction, was one of the stipulations introduced into the famous oath which, in Edward's lifetime, the duke had extorted from Harold. To enable his government to wield the resources of this maritime district with the greater vigour and promptitude, he severed it wholly from the civil and military administrations of the counties of Kent and Sussex, erecting it into a kind of palatine jurisdiction, under a *gardien*, or *warden*, who had the seat of his administration at the castle of Dover, and exercised over the whole district the combined civil, military, and naval authority; uniting in his own hands all the various functions which, to use the terms most intelligible to modern readers, we may describe as those of a sheriff of a county at large, a custos rotulorum, a lord lieutenant, and an admiral of the coast.

To the five ports of the Conqueror's time were added, before the reign of Henry III., with equal privileges, what were called the *ancient towns* of Winchelsea and Rye, lying on the Sussex coast, between Hastings and Romney. To each of these seven municipal towns, except Winchelsea, were attached one or more subordinate ports or towns, denominated *members* of the principal port.

The internal constitution of each port, as well as the Norman denominations of *jurats* and *barons*, which, in lieu of *aldermen* and *freemen*, have constantly prevailed in them all since William's time, concur to show the solidity of his plan for rendering this maritime line one of the grand outworks of the Conquest. The earliest members of the municipal bodies established under these foreign denominations, at a time when the English municipalities in general were subjected to the most rigorous enslavement, were doubtless trading settlers from William's continental dominions; and the term *barons*, as applied to the Cinque Ports' representatives, which in the later periods of English parliamentary history has usually been considered as simply synonymous with *burgesses*, did, before the several elements of the Commons' House coalesced into one homogeneous body, imply a political as well as a municipal superiority.

Until the time of Henry VII. the crown appears to have had no permanent navy: the Cinque Ports constantly furnished nearly all the shipping required for the purposes of the state, and their assistance to the king's ships continued long after that time. When ships were wanted, the king issued his summons to the ports to provide their quota. In the time of Edward I. the number they were bound to provide was fifty-seven, fully equipped, at their own cost: the period of gratuitous service was limited to fifteen days.

Each of the five original ports returned two *barons* to parliament, as early as the 18th of Edward I. The peculiar nature of the relation between the Cinque Ports and the crown must have given the latter, from the commencement, a very powerful influence in their internal transactions; and, in later times, when the parliamentary relations of the municipal towns came to be the grand object of solicitude to the royal prerogative, these municipalities imbibed an ample share of the prevalent municipal as well as political corruption. In the 20th of Charles II. the first open blow was struck by the crown at the liberties of the Ports in general, in the provision of Charles's charter of that year, by which the elections of all their recorders and common clerks were made subject to the royal approbation. Subsequently, in 1685, all the general charters of the Ports, and most of the particular charters of each individual town, were, by the king's special command, delivered up to Colonel Strode, then constable of Dover Castle, and were never afterwards recovered.

Before the Revolution in 1688 the lord-wardens assumed the power and the right of nominating one, and sometimes both, of the members for each of the port-towns having parliamentary representation; but this practice was terminated by an act passed in the first year after the Revolution, entitled 'An Act to declare the Right and Freedom of Election of Mem-

bers to serve in Parliament for the Cinque Ports.'

The jurisdiction of the Cinque Ports collectively extends along the coast, continuously, from Birchington, which is west of Margate, to Seaford in Sussex. But several of the corporate members are quite inland. Tenterden, in the centre of a rich agricultural district, has not even a river near it. Many of the unincorporate members are not only inland, but situated at great distances from their respective ports, some as far as forty to fifty miles. All the unincorporated members being exclusively under the jurisdiction of their own ports, each of those members was obliged to have recourse to the justices and coroner of its own port. This inconvenience was partially removed by 51 Geo. III. c. 36, entitled 'An Act to facilitate the Execution of Justice within the Cinque Ports.'

The Parliamentary Reform Act of 1832 worked a considerable revolution in the political relations of the Cinque Ports, and the Municipal Reform Act has operated yet more decidedly to break up the ancient organization of the ports, and assimilate their internal arrangements to those of the improved English municipalities at large.

Anciently there were several courts, exercising a general jurisdiction over all the ports and members. The Court of Shepway was the supreme court of the Cinque Ports. The lord warden presided in it, assisted by the mayors and bailiffs and a certain number of jurats summoned from each corporate town. Two other ancient courts are still occasionally held, the Court of Brotherhood and the Court of Guestling. The Court of Brotherhood is composed of the mayors of the five ports and two ancients towns and a certain number of jurats from each of them. The Court of Guestling consists of the same persons, with the addition of the mayors and bailiffs of all the corporate members, and a certain number of jurats from each of them. It is thought that the bodies forming this addition may originally have been merely *invited* by the Court of Brotherhood to give their assistance, and that hence the assembly may have received the name of Guestling. In the Court of Brotherhood the arrangements and regulations were made as to the apportioning of the service of ships to the crown. The necessity for proceedings of this kind no longer exists; and although these courts have been occasionally held of late years, such holding seems to have been mere matter of form, excepting only the Courts of Brotherhood and Guestling, held before each coronation, at which the arrangements have been made respecting the privilege of the *barons* of the ports to hold the canopy over the king's head on that occasion; another mark of the pre-eminence among the municipalities of England given to these towns by the princes of the Norman line.

It remains to notice more particularly the nature of the lord warden's jurisdiction as now exercised. All writs out of the superior courts are directed to the constable of Dover Castle, who is always the lord warden; upon which his warrant is made out, directed to and executed by an officer called the *bodar*. This officer, by a curious anomaly, has also the execution of writs out of the distant civil court at Hastings; and the necessity of having recourse to him has been a source of inconvenience and dissatisfaction to the latter town. The clerk of Dover Castle acts as under-sheriff. The constable's gaol for debtors is within Dover Castle; and by act 54 Geo III. c. 97, their maintenance was provided for by an annual contribution of 300*l.*, to be levied on the ports and members in proportions fixed by the act.

The Admiralty jurisdiction of the Cinque Ports, attached to the office of lord warden, is expressly reserved in the Municipal Reform Act. A branch of this jurisdiction appears in the court of Lodemanage, so call from the old English word *lodeman*, a *lead*-man or steerer, which is held for the licensing and regulating of pilots, by the lord warden and a number of commissioners, of whom the mayors of Dover and Sandwich are officially two. The lord warden seems anciently to have held a court of chancery in one of the churches at Dover, but it has long been obsolete. (Jeake's *Charters of the Cinque Ports*, &c.)

CIRCUITS (from the French *circuit*, which is from the Latin *circuitus*, "a going about"), in English law, denote the periodical progresses of the judges of the superior courts of common law through the several counties of England and Wales, for the purpose of administering justice in civil and criminal matters. The ordinary circuits take place in the spring and summer of each year. In 1843 and 1844 a winter assize was held, and it is probable that a third assize will now take place every year. These winter commissions of oyer and terminer and general gaol delivery have not hitherto included the counties of cities. All the circuits take place under the authority of several commissions under the great seal, issued to the judges and others associated with them on each occasion. [ASSIZE.] Most barristers practising in the common law courts in London are attached to one or other of the circuits; and each circuit is constantly attended by a numerous bar. The transaction of judicial business in the presence of a professional audience of this kind, has been justly considered one of the best securities for the due administration of justice; and in consequence of the system of circuits, this advantage is not confined to the metropolis, but is communicated to the most remote parts of England and Wales.

Since the statute 11 Geo. IV. & 1 Will. IV. c. 70, by which the ancient Welsh judicature was abolished, the circuits of the judges are eight in number, and the counties of England and Wales are distributed among them in the following manner:—

The Northern Circuit comprehends the counties of York, Durham, Northumberland, Cumberland, Westmoreland, and Lancaster.

The Western Circuit comprehends the counties of Southampton, Wilts, Dorset, Devon, Cornwall, and Somerset,—and Bristol.

The Oxford Circuit comprehends the counties of Berks, Oxford, Worcester, Stafford, Salop, Hereford, Monmouth, and Gloucester.

The Midland Circuit comprehends the counties of Northampton, Rutland, Lincoln, Nottingham, Derby, Leicester, and Warwick.

The Home Circuit comprehends the counties of Hertford, Essex, Kent, Sussex, and Surrey.

[For several years preceding 1834 one of the judges made a circuit through the counties of Hertford, Essex, Kent, Sussex, and Surrey, in the month of December, for the trial of criminals. But in that year an act was passed (4 Wm. IV. c. 36) for establishing a central criminal court for London and Middlesex, and parts of Essex, Kent, and Surrey, the sessions for which are held at the Old Bailey, at least twelve times a year. The judges are the Lord Mayor, the Lord Chancellor, the Judges, the Aldermen, Recorder, and Common Sergeant of London, and such others as her Majesty may appoint. The jurisdiction of this court extends to all treasons, murders, felonies, and misdemeanours within ten miles of St. Paul's Cathedral. Offences committed on the high seas, within the jurisdiction of the Admiralty of England, are tried in this court.]

The Norfolk Circuit comprehends the counties of Buckingham, Bedford, Huntingdon, Cambridge with the Isle of Ely, Norfolk, and Suffolk.

The South Wales Circuit comprehends the counties of Glamorgan, Carmarthen, Pembroke, Cardigan, Brecon, and Radnor.

The North Wales Circuit comprehends the counties of Montgomery, Merioneth, Carnarvon, Anglesey, Denbigh, Flint, and Chester.

Ireland is divided into the North-East Circuit, the North-West Circuit, the Home Circuit, and the Leinster, Connaught, and Munster Circuits.

Scotland is not divided into Circuits. Assizes are held twice a year in Aberdeen, Inverness, Perth, Ayr, Dumfries, Jedburgh, Glasgow, Inverary, and Stirling: at Glasgow they are held three times a year.

The total number of towns in which assizes are held is, in England, 66; Ireland, 34; and Scotland, 9. In many counties, especially in England, the assizes are held alternately at two different towns of the county. In Surrey they are held in three different towns,—the Spring

assizes at Kingston, and the Summer assizes at Croydon and Guildford alternately.

The Commissioners of Insolvent Debtors make circuits thrice a year throughout England and Wales, for the purpose of discharging insolvent debtors. There are four circuits, corresponding with the number of commissioners. The Home Circuit comprises five towns, the Midland twenty-six, the Northern twenty-two, and the Southern twenty-six,—in all seventy-six towns.

The Romans used to divide their Provinces into districts, and to appoint certain places, at which the people within the several districts used to assemble at stated times for the purpose of having their disputes settled by legal process. These places were called Conventus, "meetings," a word which properly signified "the act of meeting," and the assembly or people who met; and the term "Conventus" was also used to express the jurisdiction exercised by the governor at such district courts, and also the districts themselves. The practice was for the governor to make a circuit through the province and hold his courts at each Conventus at stated times, as we see from various passages in Cicero's works and Caesar's 'Gallic War.' (Cicero *Against Verres*, vii. c. 11; Caesar, *Gallic War*, i. 6, v. 2.) During his Gallic War Caesar used to go his Circuits in the winter after the campaign for the year was over. Some towns in the Roman Provinces obtained the privileges of having magistrates of their own (Jus Italicum), but as the governor (proconsul, or praetor) had the supreme authority, there was probably an appeal to him from the decision of such magistrates. Pliny (iii. 1. 3; iv. 22) states that in his time Hispania Citerior, which lay between the Ebro and the Pyrenees, was divided into seven Conventus, or judicial districts, and Hispania Baetica, which was comprised between the Ebro and the Guadiana, was divided into four judicial districts. The Province of Lusitania, which corresponded pretty nearly with modern Portugal, was divided into four judicial circuits. Strabo (xiii. p. 629) has some remarks on the judicial districts in the west part of Asia Minor. The business done at the Conventus was not confined to the settlement of legal disputes; but other matters were also transacted there which required certain forms in order to have a legal effect, such as the manumission of slaves by those who were under thirty years of age (Gaius i. 20).

CITATION, a process in the commencement of a suit by which the parties are commanded to appear before the Consistorial Courts. In the Prerogative Court it is called a Decree.

CITIZEN, from the French word *Citoyen*, which remotely comes from the Latin *Civis*. Aristotle commences the Third Book of his 'Politik' with an investigation of the question, What is a citizen (πολίτης)? He defines him to be one who participates in the judicial and legislative power in a State; but he observes, that his definition strictly applies only to a democratical form of government. The Roman word Civis, in its full sense, also meant one who had some share in the sovereign power in the State. The word citizen then, if we take it in its historical sense, cannot apply to those who are the subjects of a monarch, or, in other words, of one who has the complete sovereign power. It is consistent with ancient usage and modern usage, and it is also convenient to apply the word citizen only to the members of republican governments, which term, as here understood, comprehends [REPUBLIC] constitutitional monarchies. The term constitutional monarchy is not exact, but its meaning is understood: it is a form of republican government at the head of which is a king, or person with some equivalent title, whose power and dignity are hereditary. Constitutional monarchies approach near to absolute monarchies when the constitution gives very little power to the people, and this little power is rendered ineffectual by the contrivance of the prince and his advisers. Constitutional monarchies are of an aristocratical character when much political power is vested in the hands of a minority which is small when compared with the majority; or they may approach to a democracy, and differ from it only in having an elective instead of an hereditary head. Citizenship therefore

is here understood as only applying to those States in which the constitution, whether written or unwritten, gives to those who are members of such States, or to some considerable number of them, some share of the sovereign power.

The usual form in which citizenship is acquired is by birth; by being born of citizens. In the old Greek states, and generally in those states of antiquity where citizenship existed, this was the only mode in which as a general rule it could be acquired. A person obtained no rights of citizenship by the mere circumstance of being born in a country or living there. Citizenship could only be conferred by a public act either on an individual or on all the members of other communities. Difference of religion was one of the causes of these communities excluding strangers from their political body. The Roman system was at first a close community, but the practice of admitting aliens (peregrini) to the citizenship was early introduced. They were even admitted by the old burgers (the Patricians) in considerable numbers, but only by a vote of the collective body of Patricians. The admission of aliens to the citizenship, either partial or complete, became a regular part of the Roman polity to which Rome owed the extension of her name, her language, and her power. It is true that the process of admission went on slowly, and for a long time the Romans, unwisely, and with danger to their state, resisted the claims of their Italian allies, or subject people, who demanded the Roman citizenship; but this claim was finally settled in favour of the Italians by the Social or Marsic War (B.C. 90), and by the concessions that followed that war. Sometimes the States of Italy declined admission into the Roman political body; they preferred their own constitution to the rights and duties of Roman citizens.

The Roman system did not allow a man to claim the citizenship by birth, unless he was born of such a marriage as the state recognised to be a legal marriage. If a Roman married a woman who belonged to a people with whom the Roman state recognised no intermarriage (connubium), the child was not a Roman citizen; for he was not the child of his father, and it was only as the child of a Roman father that he could claim Roman citizenship.

The English law gives the citizenship to all persons who are born anywhere of a British citizen or of one whose father or father's father was a citizen of Great Britain. The English law also gives the citizenship to every person born in the British dominions; which rule originated in the king claiming such persons as his subjects who were born within his dominions. [ALLEGIANCE.] In the earliest periods of English history, those were properly called subjects who may now properly be designated citizens; though citizenship in England must be divided into two kinds, as it was in Rome. Some native citizens do not enjoy the suffrage, nor are they eligible to certain offices, such for instance as a membership of the House of Commons. But these are not permanent and personal disabilities: they are temporary incapacities arising from not having a certain amount of property, and therefore the complete citizenship may be acquired by every man who can acquire the requisite property qualification. It follows from what has been said that those who happen to be under this disability are not full citizens, but have a capacity to become such. Those who have not the suffrage are in the situation of subjects to that sovereign body, of which those who possess the suffrage form a part. The terms on which foreigners are admitted to the citizenship are different in different countries. A recent act of parliament (7 & 8 Vict. c. 76) has rendered the acquisition of partial citizenship in England much easier and less expensive than it was under the former process of a special act of parliament. [NATURALIZATION.]

The United States of North America have had various rules as to the admission of aliens to citizenship; but at present they require a period of five years' residence as a preliminary to obtaining the citizenship. [ALIEN.] Some persons in that country would extend the period of probation to twenty-one years. This

however would be a very impolitic measure, for if foreigners will throng to a country such as the United States, with the view of settling there, the best thing is to make them citizens as soon as they wish to become such; and there would be manifest danger to the United States if the large number of foreigners who settle there should be considered as aliens for a period which would extend to the whole term of the natural life of many of the new settlers. Indeed there seems to be no objection to giving to aliens in republican governments, as soon as they choose to ask for them, all the rights and consequent duties of citizens, if they are ever to have them. It may be prudent to exclude aliens by birth from some of the high offices in a state, which is done in England and in the United States of North America. [ALIEN.]

In ancient Rome, aliens were not always admitted to the full rights of Roman citizens; and indeed in the early history of the state, even the Plebeians formed an order who were without many of the privileges which the Patricians enjoyed. A person might receive the Roman citizenship so far as to enjoy every advantage except a vote at the public elections and access to the honours of the state. This however was not citizenship as understood by Aristotle, nor is it citizenship as understood by the free states of modern times. The acquisition of complete citizenship implies the acquisition of a share of the sovereign power: the acquisition of all the rights of a citizen, except the suffrage and access to the honours of the state, is a limited citizenship; and it is no more than may be acquired in those states where there is no representative body, and in which a man by such acquisition gets not citizenship, but the state gets a subject.

The great facilities for a man changing his residence which now exist, and the increased motives to such change in a desire to better his condition by permanently settling in another country, lead to emigration from one country to another, and more particularly from Europe to America. The advantage which any country receives from the emigration of those who possess capital or peculiar arts is so great, that, under the present circumstances of the world, it is not easy to discover any good reason for Republican governments refusing to give the citizenship to any person who comes to another country with the view of settling there. A difficulty will arise in case of war, when a man owes a divided allegiance, for it is a principle of English law that a man cannot divest himself of his allegiance to the king of England; and probably an American citizen cannot divest himself of his allegiance to the United States. [ALIEN.] And yet the two countries which maintain this legal principle, allow the citizens of any other country to become citizens of their several communities. The Roman principle under the Republic was, that as soon as a Roman was admitted a citizen of another State, he ceased to be a Roman citizen, because a man could not belong to two States at once; wherein we have one among many examples of the precision of Roman political principles. The same principle must certainly be adopted some time into the international law of modern States.

The nations of Europe and the States of the two Americas have all a common religion, which however contains a great number of sects. A person of any religion in the United States of North America may become a citizen, and his opinions are no obstacle to his enjoying any of the honours of the country. But this is not so in England. No man for instance, though an English citizen, can be a member of the House of Commons unless he is, or is willing to profess that he is, a Christian.

CITY (in French *Cité*, ultimately from the Latin *Civitas*). Certain large and ancient towns both in England and in other countries are called cities, and they are supposed to rank before other towns. On what the distinction is founded is not well ascertained. The word seems to be one of common use, or at most to be used in the letters and charters of kings as a complimentary or honorary name, rather than as betokening the possession of any social privileges which may not and in fact do not belong to other ancient and incorpo-

rated places which are still known only by the name of towns or boroughs. Richelet (*Dictionnaire*) says that the French word *cité* is only used in general when we speak of places where there are two towns, an old town and another which has been built since; and he adds that "la cité de Paris" means old Paris.

Sir William Blackstone, following Coke (1 *Inst.*, 109 b), says, "A city is a town incorporated, which is or hath been the see of a bishop." (*Comm. Introd.*, sec. iv.) But Westminster is a city, though it is not incorporated. Thetford is a town, though incorporated, and once the seat of a bishop. Whether Westminster owes its designation to the circumstance that it had a bishop for a few years of the reign of Henry VIII., and in the reign of Edward VI., may be doubted. But there are, besides Thetford, many places which were once the seats of bishops, as Sherburn, and Dorchester in Oxfordshire, which are never called cities. On the whole, we can rather say that certain of our ancient towns are called cities, and their inhabitants citizens, than show why this distinction prevails and what are the criteria by which they are distinguished from other towns. These ancient towns are those in which the cathedral of a bishop is found; to which are to be added Bath and Coventry, which, respectively with Wells and Lichfield, occur in the designation of the bishop in whose diocese they are situated; and Westminster, which in this respect stands alone.

In the United States of North America the name City is usually given to large towns, as New York, Philadelphia, and others.

CIVIL LAW. [ROMAN LAW.]

CIVIL LIST. The expenses of the English government, including military expenses, were formerly comprehended in one general list, and defrayed out of what was called the royal revenue. For a considerable period after the Conquest this revenue, derived from the rents of the crown lands, and from other sources, was at the command and under the uncontrolled management of the crown through the exercise of the prerogative. Even when at a later period the greater portion of the expenses of the government came to be granted by parliament in the form of supplies, the entire expenditure was still left with the crown, and the supplies were either voted for no specific purpose, or when they were voted for a special purpose, parliament had no control over their application.

This state of things continued to the Restoration in 1660. A distinction was then made between the military expenses of the government, or those occasioned by war, which were considered of the nature of extraordinary expenses, and those incurred in the maintenance of the ordinary establishments of the country. The revenues appropriated to the latter were called the hereditary or civil-list revenues, and were provided for partly from the crown lands that remained unalienated, and partly from certain taxes imposed by parliament expressly for that purpose during the life of the reigning king. In the reign of King William III. the sum applicable to the civil list, on an average of years, amounted to the annual sum of about 680,000*l.* This sum was applied in defraying the expenses of the royal household and of the privy purse, the maintenance and repairs of the royal palaces, the salaries of the lord chancellor, the judges, the great officers of state, and the ambassadors at foreign courts; and out of it were also paid the incomes of the members of the royal family, the secret service money, pensions, and a long list of other claims. The interest of the national debt, however, was never defrayed from the sum allotted for the civil list.

In the reign of Queen Anne the civil list remained of nearly the same amount as in the reign of King William. The principal taxes appropriated to it were an excise of 2*s.* 6*d.* per barrel on beer, which produced about 286,000*l.* per annum, a tonnage and poundage duty, which produced about 257,000*l.*, and the profits of the post-office, from which about 100,000*l.* was derived.

At the commencement of the reign of George I., 700,000*l.* a year was voted by parliament for the civil list, and certain taxes, as usual, were appropriated to that branch of the public expenditure.

On the accession of George II. it was provided, that if the taxes which had been appropriated to the civil list in the previous reign did not produce 800,000*l.* per annum, the deficiency should be made up by parliament, and that any surplus beyond that sum should be retained by the crown.

At the accession of George III. he surrendered the larger branches of the hereditary revenue of England, and the sum of 800,000*l.* was again voted by parliament for the civil list, but no particular taxes were set apart to provide that revenue. In the course of a few years, however, a large amount of debt had accumulated in this department, and to pay it off, two sums amounting together to considerably above 1,000,000*l.* were voted by parliament in 1769 and 1777. In the latter year also the civil-list revenue was permanently raised to 900,000*l.* This, however, did not prevent further deficiencies, which were again made good by parliament in 1784 and 1786, to the extent of about 270,000*l.*

In 1780 Mr. Burke brought in his bill for the better regulation of the civil list, which, although it was greatly mutilated before it passed into a law (in 1782), abolished several useless offices, and effected some reduction of expenditure.

According to the report of a committee of the House of Commons which sat upon the subject of the civil list in 1802, the total average annual expenditure in that branch since 1786 had been 1,000,167*l.*, under the following heads:—royal family in all its branches, 209,988*l.*; great officers of state, 33,279*l.*; foreign ministers, 80,526*l.*; tradesmen's bills, 174,697*l.*; menial servants of the household, 92,424*l.*; pensions, 114,817*l.*; salaries to various officers, 76,013*l.*; commissioners of the treasury, 14,455*l.*; occasional payments, 203,964*l.* At this time another sum of above 990,000*l.* was voted by parliament to pay the debts on the civil list; and in 1804 the civil-list revenue was raised to 960,000*l.* In 1812 it was further augmented to 1,080,000*l.*; besides which, annuities to the amount of 260,000*l.* were then paid to the different branches of the royal family out of the consolidated fund.

Another committee inquired into the subject of the civil list in 1815, and it was upon the report made by this committee that the amount of the civil list was settled, on the accession of George IV., at 850,000*l.* per annum, 255,000*l.* of annual charge being at the same time transferred from this branch to other funds. It was calculated that the distribution of this sum would be under the following heads:—1. His Majesty's privy purse, 60,000*l.* 2. Allowances to the lord chancellor, judges, and Speaker of the House of Commons, 32,956*l.* 3. Salaries, &c. of his Majesty's ambassadors and other ministers, salaries to consuls, and pensions to retired ambassadors and ministers, 226,950*l.* 4. Expenses, except salaries, of his Majesty's household in the departments of the lord steward, lord chamberlain, master of the horse, master of the robes, and surveyor-general of works, 209,000*l.* 5. Salaries in the last-mentioned departments, 140,700*l.* 6. Pensions limited by Act 22 Geo. III. c. 82, 95,000*l.* 7. Salaries to certain officers of state, and various other allowances, 41,306*l.* 8. Salaries to the commissioners of the treasury and chancellor of the exchequer, 13,822*l.* 9. Occasional payments not comprised in any of the aforesaid classes, 26,000*l.* The crown was left besides in the enjoyment of the hereditary revenues in Scotland, amounting to about 110,000*l.* per annum; and also of a civil list for Ireland, of 207,000*l.*

On the 15th of November, 1830, immediately after the accession of King William IV., the late Lord Congleton, then Sir Henry Parnell, carried in the House of Commons a motion for appointing a select committee to inquire into the civil list. The chief object proposed was the separation of the proper expenses of the crown from all those other charges which still continued to be mixed up with them under that title. The consequence of the success of this motion (besides the overthrow of the Wellington administration and the introduction of the Reform Bill) was another report, upon which was founded the Act 1 Will. IV. c. 25, for the regulation of the civil list. The committee which was appointed on the motion of Sir H. Parnell, recommended

that the civil-list charges should be confined to expenses proper for the maintenance of their Majesties' household, and the sum of 510,000*l.* was granted to his Majesty by the above act under the following classes:—1. For their Majesties' privy purse, 110,000*l.* 2. Salaries of his Majesty's household, 130,300*l.* 3. Expenses of his Majesty's household, 171,500*l.* 4. Special and secret service, 23,200*l.* 5. Pensions, 75,000*l.* A separate civil list for Ireland was discontinued; and the Scotch hereditary revenues, as well as the droits of admiralty, and the 4½ per cent. duties, were to be paid into the Exchequer for the use of the public.

Speaking of the civil list as settled by 1 Will. IV. c. 25, and comparing it with the civil list of King Geo. IV., Lord Congleton remarked ('Financial Reform,' p. 205) "that there was no real reduction in that arrangement, for whatever appears to be a reduction, has been produced by a transfer of charge from one head to another of the old civil list. The chief difference in this arrangement from the former consists in the transfer of about 460,000*l.* a year from the civil list to the consolidated fund, and in providing for the gradual reduction of the pensions to 75,000*l.* a year."

William IV. retained the revenues of the duchies of Lancaster and Cornwall, which are considered to be the hereditary revenues, not of the crown, but of the duchies of Lancaster and of Cornwall. The duchy of Lancaster is permanently annexed to the crown, and the duchy of Cornwall belongs to the crown when there is no Prince of Wales. No account of the amount of these revenues had ever been laid before parliament until very recently. In his speech on Economical Reform in 1780, Mr. Burke said, "Every one of those principalities has the appearance of a kingdom, for the jurisdiction over a few private estates; and the formality and charge of the Exchequer of Great Britain, for collecting the rents of a country squire. Cornwall is the best of them; but when you compare the charge with the receipt, you will find that it furnishes no exception to the general rule. The duchy and county palatine of Lancaster do not yield, as I have reason to believe, on an average of twenty years, 4000*l.* a year clear to the crown. As to Wales and the county palatine of Chester, I have my doubts whether their productive exchequer yields any returns at all."*

The Civil List of Queen Victoria was settled by 1 Vict. c. 2. This act contains a very important and salutary provision, which will shortly be noticed, respecting pensions. The preamble of the act states that her majesty had placed unreservedly at the disposal of the commons in parliament those hereditary revenues which were transferred to the public by her immediate predecessors, and that her majesty felt confident that her faithful commons would gladly make adequate provision for the support of the honour and dignity of the crown. It is then enacted, that the hereditary revenue shall be carried to the Consolidated Fund during the life of her majesty, but that after her demise it shall be payable to her successors. The latter part of the enactment is a mere form. By § 3 the clear yearly sum of 385,000*l.* is to be paid out of the Consolidated Fund for the support of her majesty's household and of the honour and dignity of the crown, to be applied according to a schedule as under:—

1. For her Majesty's privy purse	£60,000
2. Salaries of her Majesty's household and retired allowances . . .	131,260
3. Expenses of her Majesty's household . . .	172,500
4. Royal bounty, alms, and special services . .	13,200
5. Pensions to the extent of 1200*l.* per annum.	
6. Unappropriated monies .	8,040
	£385,000

The restriction to which allusion has been made relates to class 5 in the schedule.

* The gross revenues of the duchy of Cornwall in 1843 amounted to 40,100*l.* The two largest items were, rents and arrears 14,069*l.*; compensation in lieu of the tin coinage duties 15,741*l.* The sum required to defray salaries, allowances, and annuities was 8425*l.*, the payments made to the use of the Prince of Wales, and which in the previous reign were enjoyed by the king, were 18,579*l.*, and a sum of 2000*l.* was expended in purchasing the surrender of beneficial leases. The sum set down as balances and arrears was 8486*l.* The gross

This check upon the wanton and extravagant disposal of the public money is thoroughly in accordance with just and constitutional principles. The amount which can be granted in pensions by the crown in any one year is not to exceed 1200*l.*; and the Civil List Act restricts, though in a comprehensive spirit, the persons to whom they are to be granted, who must be such persons only as have just claims on the royal benevolence, or who by their personal services to the crown, by the performance of duties to the public, or by their useful discoveries in science and attainments in literature and the arts, have merited the gracious consideration of their sovereign and the gratitude of their country. A list of all such pensions must be laid before parliament yearly. [PENSIONS; WOODS AND FORESTS.]

CIVILIZATION. The words civilization, education, and religion, with many others, are often used without any precise ideas being attached to them; yet there are no words that require to be more thoroughly analysed.

The meaning of a word is often formed by degrees. As soon as a particular fact presents itself to our notice which appears to have a specific relation to a known term, it becomes immediately incorporated with it; and hence the meaning of many terms gradually extends, and finally embraces all the various facts and ideas which are considered to belong to it. On this account, there is more depth as well as accuracy in the usual and ordinary meaning of complex terms than in any definitions which can be given of them, notwithstanding the definition may appear to be more strict and precise. In the majority of instances scientific definitions are too narrow, and owing to this circumstance they are frequently less exact than the popular meaning of terms; it is therefore in its popular and ordinary signification that we must seek for the various ideas that are included in the term civilization.

Now, the fundamental notion of civilization is that of a progressive movement, of a gradual development, and a tendency to amelioration. It always suggests the idea of a community, of a political body, of a nation, which is advancing methodically, and with distinct and clear views of the objects which it seeks to attain: progress, continual improvement, is therefore the fundamental idea contained in our notion of the term Civilization.

As to this progress and improvement involved in the term Civilization, to what do they apply? The etymology of the word answers the question. From this we learn that it does not contemplate the actual number, power, or wealth of a people, but their *civil* condition, their social relations, and intercourse with each other. Such then is the first impression which arises in our mind when we pronounce the word *Civilization*. It seems to represent to us at once the greatest activity and the best possible organization of society; so as to be productive of a continual increase, and a distribution of wealth and power among its members, whereby their absolute and relative condition is kept in a state of constant improvement.

But great as is the influence which a well organised civil society must have upon the happiness of the human race, the term Civilization seems to convey something still more extensive, more full and complete, and of a more elevated and dignified character, than the mere perfection of the social relations, as a matter of order and arrangement. In this other aspect of the word it embraces the development of the intellectual and moral faculties of man, of his feelings, his propensities, his natural capacities, and his tastes.

Education, which is the result of a well ordered social arrangement, and also its perfector and conservator, an education which shall give to every member of the community the best opportunities for developing the whole of his faculties, is the end which civilization, or a society in a state of continued progress, must always have in view.

The fundamental ideas, then, contained

income of the duchy of Lancaster, which, as already explained, is enjoyed by the crown independent of arrangements under the Civil List Act, was 33,037*l.* in 1843. The sum paid out of this revenue to the keeper of her majesty's privy purse was 13,000*l.*

in the word Civilization are—the continual advancement of the whole society in wealth and prosperity, and the improvement of man in his individual capacity.

When the one proceeds without the other, it is immediately felt that there is something incomplete and wanting. The mere increase of national wealth, unaccompanied by a corresponding knowledge and intelligence on the part of the people, seems to be a state of things premature in existence, uncertain in duration, and insecure as to its stability. We are unacquainted with the causes of its origin, the principles to which it can be traced, and what hopes we may form of its continuance. We wish to persuade ourselves that this prosperity will not be limited to a few generations, or to a particular people or country, but that it will gradually spread, and finally become the inheritance of all the people of the earth. And yet what rational expectation can we entertain of such a state of things becoming universal? It is only by means of education, conducted upon right principles, that we can ever hope to see true national prosperity attained, and rendered permanent. The development of the moral and intellectual faculties must go hand in hand with the cultivation of the industrious arts; united, they form the great engine for giving true civilization to the world.

In fact, without the union of these two elements, civilization would stop half way; mere external advantages are liable to be lost or abused without the aid of those more refined and exalted studies which tend to improve the mind, and call forth the feelings and affections of the heart. It must be repeated, civilization consists in the progressive improvement of the society considered as a whole, and of all the individual members of which it is composed.

The means by which this improvement of the whole of a society and of all the members of it may be best effected, will vary somewhat in different countries. European nations consider and call their social state civilized, and they view the social states of other countries, which do not rest on the same foundation, either as barbarous or as less civilized than their own. An impartial observer may allow that if we measure civilization by the rule here laid down, the nations of Europe, and other nations whose social systems have a like basis, are the most civilized. The civilization of Europe and of the nations of European origin is founded mainly on two elements, the Christian religion and the social state which grew up from the diffusion of the power of the Romans. The establishment of feudality in many countries greatly affected the social basis; and the consequences are still seen, but more distinctly in some parts of Europe than in others. The elements of such a social system are essentially different from those on which is founded the system of China, of the nations which profess Mohammedanism, and of the nations of the Indian peninsula. European civilization is active and restless, but still subordinate to constituted authority. It gives to man the desire and the means to acquire wealth at home, and it stimulates him to adventure and discovery abroad. It seeks to assimilate the civilization of other nations to its own by conquest and colonization, and it is intolerant of all civilization that is opposed to itself. Asiatic civilization is at present inert, it is not in a state of progress, and is exposed to the inroads of European civilization. European civilization has been and is most active in increasing the power of states as states, and in increasing their wealth; it also gives facilities for men of talent and enterprise to acquire wealth and power by means recognised as legal and just; and it is now beginning to extend the means of individual improvement among all the members of its communities more widely than any other civilization; but the amount of poverty and ignorance which still co-exist by the side of wealth and intelligence, wherever European civilization has been established, show that much remains to be done before the individual happiness of these States can be as complete and their internal condition as sound as their collective wealth is unbounded and their external aspect is fair and flourishing.

The nations of Europe consider their

social system as the standard by which the civilization of other countries must be measured, and they assume as a fundamental principle, that in countries where there is no individual property in land, and where the land is not cultivated, there is no civilization, and that they may therefore seize it. This assumption is true, if we measure civilization by the rule here laid down, for on individual ownership of land, and the cultivation of land, the whole European system rests. Whether land might be advantageously cultivated in common, and the institution of private property in land might be abolished, is another question, which however has not yet been satisfactorily resolved, and cannot be resolved without destroying the present social systems of Europe.

A recent committee of the House of Commons, appointed to inquire into the state of New Zealand, have put forth the following doctrine :—" The uncivilized inhabitants of any country have but a qualified dominion over it, or a right of occupancy only, and until they establish amongst themselves a settled form of government, and subjugate the ground to their own uses by the cultivation of it, they cannot grant to individuals, not of their own tribe, any portion of it, for the simple reason that they have not themselves any individual property in it." This is not very precise language, but one may collect what it means. Lord Stanley, in a despatch to the governor of New Zealand, dated 13th August, 1844, says, " With respect to this doctrine, I am not sure that, were the question one of mere theory, I should be prepared to subscribe, unhesitatingly and without reserve, to the fundamental assumption of the committee; and I am sure that it would require considerable qualification as applicable to the aborigines of New Zealand. There are many gradations of 'uncivilized inhabitants,' and practically according to their state of civilization must be the extent of the rights which they can be allowed to claim, whenever the territory on which they reside is occupied by civilized communities." After describing the "aborigines of New Holland" as far below "the New Zealanders in civilization, and being wholly ignorant of or averse to the cultivation of the soil, with no principles of civil government or recognition of private property, and little if any knowledge of the simplest form of religion, or even of the existence of a Supreme being;" he adds, that "it is impossible to admit, on the part of a population thus situated, any rights in the soil which should be permitted to interfere with the subjugation by Europeans of the vast wilderness over which they are scattered; and all that can be required by justice, sanctioned by policy, or recommended by humanity, is to endeavour, as civilization and cultivation extend, to embrace the aborigines within their pale, to diffuse religious knowledge among them, to induce them, if possible, to adopt more settled means of providing for their subsistence, and to afford them the means of doing so, if so disposed, by an adequate reservation of lands within the limits of cultivation." The principles laid down by Lord Stanley are those which the civilized nations of Europe have long acted on, sometimes tempering their conquests of uncivilized nations with mercy and humanity, and sometimes treating them as if they were merely wild beasts that infested the country. The foundations on which even Lord Stanley places the justification of European occupation are not stated with much precision. The real foundations are, the enterprising spirit of Europeans; the pressure of difficulties at home, which drive men abroad; the necessity of possessing land in their new country, as the basis of that edifice of civilization which they propose to erect after the model of the mother country; and the power to take from those who are too feeble to resist. Europeans admit, and the admission is contained by implication in Lord Stanley's remarks, that the nearer a nation's social system approaches to their own, the safer should it be against unprovoked aggression; but they contend, as Lord Stanley does, that the same self-restraint will not and ought not to be practised in those cases where the social system, or the mode of life, is altogether opposed to those fundamental principles on which European society is constituted.

CLARENDON, THE CONSTITUTIONS OF, were certain declaratory ordinances agreed to at a general council of the nobility and prelates assembled by Henry II. at his palace or manor of Clarendon, in Wiltshire, in the year 1164. These ordinances were sixteen in number, and were intended to define the limits between civil and ecclesiastical jurisdictions, to prevent the further encroachments of the clergy, and to abolish the abuses which had arisen from the gradual and increasing usurpations of the pope. (Howell's *State Trials*, vol. ii. p. 546.)

CLEARING-HOUSE. [BANK, p. 273.]

CLERGY, a collective term, under which that portion of the population of a country is comprehended who are in holy orders. It is used in contradistinction to *laity*, which comprehends all other persons. Like most ecclesiastical terms, it is of Greek origin, the word κληρικός (cléricus) having been used in the sense of "appertaining to spiritual persons" by the Greek ecclesiastical writers. From *clericus* comes the word *clerk*, which is still a law-term used to designate clergymen, but which appears antiently not to have been confined to persons actually in holy orders, but to have been applied to persons possessed of a certain amount of learning.

The distinction of clergy and laity in the Christian church may be considered as coeval with the existence of the church itself; for in the apostolic period there were officers in the church specially appointed to discharge the duties of pastors or deacons, and even, as many suppose, bishops or overseers, who had the superintendence of various inferior officers. These persons, though they might not perhaps be entirely relieved from the ordinary duties of life, so that they might devote themselves exclusively to their sacred office, yet must necessarily have been nearly so, and it is certain that they were nominated to their offices by some peculiar forms. Very early however the distinction became complete. The bishops, priests, and deacons of the Christian church, each ordained to the office in a manner which it was believed the founders of Christianity appointed, and each supposed to have received a peculiar spiritual grace by devolution from the apostles and from the founder of Christianity himself, soon formed a distinct body of men whom it was convenient to distinguish by some particular appellation.

In Christian nations the distinction has been usually recognised by the state, who have allowed certain privileges or exemptions to the clergy. No inconsiderable share of temporal power, extending not only over the members of their own body, but over the laity, has in most states been conceded to them. In the old German confederation the sovereign power in some of the states was vested in ecclesiastics; while at Rome there has been for many ages an elective head, in whom all temporal and spiritual authority over the states of the church has been vested.

It is easy to account for the ascendency of the clergy in the middle ages, and their acquisition of power. They were the best instructed part of the population. The learning of the age was almost exclusively theirs; and knowledge is a means of obtaining power. Beside this they had the means of working upon the ruder minds of the laity, in the power vested in them alone of administering the sacraments of the church, and of regulating under what circumstances those sacraments ought to be administered. This enabled them to win acquiescence in any favourite design, sometimes by gentle influences and sometimes by terror.

The history of almost every country of modern Europe presents instances of struggles between the laity and the clergy for power or privilege. All power in the clergy of England to erect an authority dangerous to the laity, or to secure to themselves political immunities or privileges inconsistent with the general good, was broken at the Reformation. The clergy of England then became a fragment of a once great and well disciplined body dispersed through the whole of Christendom, which, when acting with common effort, and putting forth all its strength, it had been difficult for any single temporal prince to resist with effect.

The clergy were before the Reformation in England divided into regular and secular. The regular clergy were the religious orders who lived under some religious rule (regula), such as abbots and monks. The secular clergy were those who did not live under a religious rule, but had the care of souls, as bishops and priests. The phrase *the clergy* now means in the English and Irish established church all persons who are in holy orders. The privileges which the law of England allows to the clergy are but a faint shadow of the privileges which they enjoyed before the Reformation. A clergyman cannot be compelled to serve on a jury, or to appear at a court leet or view of frankpledge. He cannot be compelled to serve the office of bailiff reeve, constable, or the like. He is privileged from arrest in civil suits while engaged in divine service, and while going to or returning from it; and it is a misdemeanour to arrest him while he is so engaged. (5 Geo. IV. c. 31, s. 23.) He is exempted from paying toll at turnpike-gates, when going to or returning from his parochial duty. He could claim benefit of clergy more than once. [BENEFIT OF CLERGY.] The clergy cannot now sit in the House of Commons. This was formerly a doubtful point, but it was settled by 41 Geo. III. c. 63, which enacted that "no person having been ordained to the office of priest or deacon, or being a minister of the Church of Scotland, is capable of being elected;" and that if he should sit or vote, he is liable to forfeit 500*l.* for each day, to any one who may sue for it. The Roman Catholic clergy are excluded, by 10 Geo. IV. c. 7, § 9. (May's *Parliament*, p. 27.)

The old ecclesiastical constitutions prohibited clergymen acting as judges in causes of life and death; but there was usually a clause saving the privilege of the king to employ whom he thought proper in any way, and the prohibition was therefore of little practical effect. The bishops, however, do not at the present day vote in the House of Lords in any case of life or death. [BISHOP, p. 376.] Ecclesiastical persons have sat as chief justices of the King's Bench in former times. (Blacks. *Comm.* c. 17.) The last ecclesiastic who filled the office of lord high chancellor was Bishop Williams, from 1621 to 1625 [CHANCELLOR, p. 480]; and the last who acted publicly in a diplomatic capacity was the Bishop of Bristol, at Utrecht, when the treaty of 1713 was negotiated. In 1831 a parliamentary paper was issued (No. 39), which showed the number of clergymen in the commission of the peace in England. In many counties the proportion of clergymen was one-third of the whole number of justices; in several counties above one-half; in Derbyshire and Sussex there was not one clergyman in the commission, and in Kent only two. Lord-lieutenants have in some cases made it a rule not to recommend clergymen to the lord chancellor. This is in strict accordance with some of the old constitutions, which were founded on the principle that clergymen should not be entangled with temporal affairs.

By 21 Henry VIII. c. 13, the clergy were forbidden to farm lands, or to buy any cattle or merchandise to sell for profit; but if their glebe-lands were insufficient, they might farm more, in order to maintain their families, and might buy cattle to obtain manure. By 57 Geo. III. c. 99, they were permitted, with consent of the bishop of the diocese, to farm lands to the extent of eighty acres for a term not exceeding seven years.

The act which now applies to farming and trafficking by the clergy is the 1 & 2 Vict. c. 106, which consolidated former acts on this subject: its provisions do not extend to Ireland. The term "spiritual persons" includes persons "licensed or otherwise allowed to perform the duties of any ecclesiastical office whatever." The clause (§ 28) which relates to farming is substantially the same as in 57 Geo. III. c. 99.

The clause (§ 29) respecting spiritual persons engaging in trade, or buying to sell again for profit, enacts that it shall not be lawful for such persons "to engage in or carry on any trade or dealing for gain or profit, or to deal in any goods, wares, or merchandise, unless in any case in which such trading or dealing shall have been or shall be carried on by or on behalf of any number of partners exceed-

ing the number of six, or in any case in which any trade or dealing, or any share in any trade or dealing, shall have devolved or shall devolve upon any spiritual person or upon any other person for him or to his use, under or by virtue of any devise, bequest, inheritance, intestacy, settlement, marriage, bankruptcy, or insolvency; but in none of the foregoing excepted cases shall it be lawful for such spiritual person to act as a director or managing partner, or to carry on such trade or dealing as aforesaid in person."

Spiritual persons holding benefices could not legally become members of a joint-stock banking company before the passing of a short act, 1 Vict. c. 10, which enacted that no association or co-partnership or contract should be void by reason only of spiritual persons being members thereof; and the principle of the act is now adopted in 1 & 2 Vict. c. 106.

It is enacted in § 30 of 1 & 2 Vict. c. 106, "That nothing hereinbefore contained shall subject to any penalty or forfeiture any spiritual person for keeping a school or seminary, or acting as a schoolmaster or tutor or instructor, or being in any manner concerned or engaged in giving instruction or education for profit or reward, or for buying or selling or doing any other thing in relation to the management of any such school, seminary, or employment, or to any spiritual person whatever, for the buying of any goods, wares, or merchandise, or articles of any description, which shall without fraud be bought with intent at the buying thereof to be used by the spiritual person buying the same for his family or in his household; and after the buying of any such goods, wares, or merchandises, or articles, selling the same again or any parts thereof, which such person may not want or choose to keep, although the same shall be sold at an advanced price beyond that which may have been given for the same; or for disposing of any books or other works to or by means of any bookseller or publisher; or for being a manager, director, partner, or shareholder, in any benefit society, or fire or life assurance society, by whatever name or designation such society may have been constituted; or for any buying or selling again for gain or profit, of any cattle or corn or other articles necessary or convenient to be bought, sold, kept, or maintained by any spiritual person, or any other person for him or to his use, for the occupation, manuring, improving, pasturage, or profit of any glebe, demesne lands, or other lands or hereditaments which may be lawfully held and occupied, possessed, or enjoyed by such spiritual person, or any other for him or to his use; or for selling any minerals, the produce of mines situated on his own lands; so nevertheless that no such spiritual person shall buy or sell any cattle or corn, or other articles as aforesaid, in person in any market, fair, or place of public sale."

Under § 31 of the act the bishop of the diocese might suspend a spiritual person for illegally trading, and for the third offence such person might be deprived; but proceedings for this offence would now be regulated by 3 & 4 Vict. c. 86.

This act (3 & 4 Vict. c. 86, commonly called the Church Discipline Act) was passed in 1840, "for better enforcing Church Discipline," and it repeals the old statute (1 Henry VII. c. 4) under which bishops were enabled to proceed against their clergy and sentence them to imprisonment. Before this act was passed, the mode of procedure against spiritual persons for ecclesiastical offences was "by articles in the diocesan or peculiar court, or by letters of request to the court of the metropolitan." (Phillimore's Burn, iii. 365.) Dr. Phillimore states, that "any person, it has been held, may prosecute a clergyman for neglect of his clerical duty." The 3 & 4 Vict. c. 86, enacts, "that no criminal suit or proceeding against a clerk in holy orders of the United Church of England and Ireland, for any offence against the laws ecclesiastical, shall be instituted in any ecclesiastical court otherwise than is hereinbefore enacted or provided," nor in any other mode than that pointed out by the act (§ 3). The act provides, "that in every case of any clerk in holy orders in the United Church of England and Ireland, who may be charged with any offence against the laws ecclesiastical, or concerning whom there may exist scandal

or evil report, as having offended against the said laws, it shall be lawful for the bishop of the diocese within which the offence is alleged or reported to have been committed, on the application of any party complaining thereof, or if he shall think fit, of his own mere motion, to issue a commission under his hand or seal to five persons, of whom one shall be his vicar-general, or an archdeacon or rural dean within the diocese, for the purpose of making inquiry as to the grounds of such charge or report: provided always, that notice of the intention to issue such commission under the hand of the bishop, containing an intimation of the nature of the offence, together with the names, addition, and residence of the party on whose application or motion such commission shall be about to issue, shall be sent by the bishop to the party accused fourteen days at least before such commission shall issue." The bishop may pronounce sentence without further proceedings, by consent of the clerk; and such sentence is good and effectual in law. If he refuse or neglect to appear and make answer to the articles alleged, other than an unqualified admission of the truth thereof, "the bishop shall proceed to hear the cause, with the assistance of three assessors, to be nominated by the bishop, one of whom shall be an advocate who shall have practised not less than five years in the court of the archbishop of the province, or a serjeant-at-law, or a barrister of not less than seven years' standing; and another shall be dean of his cathedral church, or of one of his cathedral churches, or one of his archdeacons, or his chancellor; and upon the hearing of such cause the bishop shall determine the same, and pronounce sentence thereupon, according to the ecclesiastical law."

When the charge is under investigation the bishop may inhibit the party accused from performing any services of the church within his diocese until sentence has been passed; but if the person accused be the incumbent of a benefice, he may nominate any person or persons to perform such services during his inhibition, and such persons are to be licensed by the bishop, if they are approved of by him. Appeals under the act are to the archbishop, and are to be heard before the judge of the court of appeal of his province; but if the cause has been heard and determined in the first instance in the court of the archbishop, the appeal is then to the queen in council, and is to be heard before the judicial committee of Privy Council; and at least one archbishop or bishop, who is a member of the Privy Council, must be present.

In the Constitutions and Canons Ecclesiastical of 1603, canons 31 to 76 inclusive relate to "Ministers; their Ordination, Function, and Charge." By the 76th canon "no man, being admitted a deacon or minister, shall from thenceforth voluntarily relinquish the same, nor afterwards use himself in the course of his life as a layman, upon pain of excommunication."

The clergy meet by delegates in convocation at the beginning of every new parliament, but this is now merely a form; the king, as supreme head of the Church of England, invariably dissolves the convocation before they can proceed to any business. They have however still courts in which jurisdiction is exercised touching ecclesiastical affairs, and causes matrimonial, and testamentary so far as concerns the granting of probates and letters of administration, and where the church's censures are directed against particular classes of offenders. To them also belongs the whole ecclesiastical revenue in the Established Church of England, with divers fees or customary payments, and to them also the whole regulation of the terms of admission to their order.

The three great classes of the English clergy are the bishops, priests, and deacons. To be admitted into each of those classes requires a peculiar ordination. This distinction is of an entirely different kind from that which arises out of office or appointment. Of this kind of distinction there is in the English clergy the archbishop, the bishop, the dean and canons of a conventual or collegiate church (some of the canons being in many instances invested with particular characters, as precentors, succentors, and the like), the archdeacon, the rural dean, the dean of some church whose consti-

tution is peculiar, the rector, the vicar, the curate in some chapels called parochial, the minister in some newly-founded chapel, whether a chapel of ease or what is called a proprietary chapel, assistant ministers to aid the vicar or the rector in some churches of antient foundation, and, finally, a body of persons called curates, who are engaged by the incumbents of benefices to assist them in the performance of their duties, but who are not dismissable at the caprice of the incumbent, nor left by law without a claim upon a certain portion of the profits of the benefice.

England is divided into 10,780 districts, varying in extent, called parishes. Each of these parishes must be regarded as having its church, and one person (or in some instances more than one) who ministers divine ordinances in that church. This person, whose proper designation is *persona ecclesiæ*, enjoys of common right the tithe of the parish, and has usually a house and glebe belonging to his benefice. When this, the original arrangement, is undisturbed, we have a parish and its rector; and in other cases the vicar and perpetual curate. [BENEFICE, pp. 341-343.]

CLERGY, BENEFIT OF. [BENEFIT OF CLERGY.]

CLERK IN ORDERS. [CLERGY.]

CLERK OF ASSIZE is an officer attached to each circuit, who accompanies the judges at the assizes, and performs all the ministerial acts of the court. He issues subpænas, orders, writs, and other processes, draws indictments; takes, discharges, and respites recognizances; files informations, affidavits, and other instruments, enters every *nolle prosequi*, records all the proceedings of the court, and enters its judgments. He is associated with the judges in the commissions to take assizes; and he is restrained by statute 33 Hen. VIII. c. 24, from being counsel for any person on his circuit. He is paid by fees which are charged upon the several official acts performed by him, some, by virtue of established usage, and others, under various statutes, 55 Geo. III. c. 56; 7 Geo. IV. c. 64; 7 & 8 Geo. IV. c. 28; 11 Geo. IV.; & 1 Wm. IV. c. 58. The fees payable on each circuit will be found in *Parl. Paper*, No. 631 of 1843. (*Parl. Paper*, 1843, No. 631; Wood's *Institutes*.)

CLERK OF THE CROWN IN CHANCERY, is an officer of the crown in attendance upon both Houses of Parliament, and upon the great seal. In the House of Lords he makes out and issues all writs of summons to peers, writs for the attendance of the judges, commissions to summon and prorogue Parliament, and to pass bills; and he attends at the table of the House to read the titles of bills whenever the royal assent is given to them, either by the queen in person or by commission. He receives and has the custody of the returns of the representative peers of Scotland, and certifies them to the House; and makes out and issues writs for the election of representative peers of Ireland and their writs of summons. He is the registrar of the Lord High Steward's Court for state trials and for the trial of peers; and he is also registrar of the Coronation Court of Claims.

In connexion with the House of Commons, he makes out and issues all writs for the election of members in Great Britain (those for Ireland being issued by the clerk of the crown in Ireland); gives notice thereof to the secretary-at-war, under act 8 Geo. II. c. 30, for the removal of troops from the place of election; receives and retains the custody of all returns to Parliament for the United Kingdom; notifies each return in the 'London Gazette,' registers it in the books of his office, and certifies it to the House. By act 6 & 7 Vict. c. 18, he has the custody of all poll-books taken at elections, and is required to register them, to give office copies or an inspection of them to all parties applying, and to prove them before election committees. He attends all election committees with the returns of members; and when a return is to be amended in consequence of the determination of an election committee, he attends at the table of the House to amend it.

He is an officer of the lord high chancellor, not in his judicial capacity, but as holding the great seal; and in this department he makes out all patents, commissions, warrants, appointments, or other

instruments that pass the great seal, except patents for inventions and other patents and charters which are passed in the Patent Office. He also administers the oaths of office to the lord chancellor, the judges, the serjeants-at-law, and all other law officers, and records the same in the books of his office. For these several duties he receives a salary of 1000*l.* a year, under 7 & 8 Vict. c. 77. (*Parl. Report*, No. 455, *of Session* 1844.)

The office of the Clerk of the Crown is commonly called the Crown Office; but there is also an office in the Court of Queen's Bench called the Crown side of the Court, of which there is a master and other officers.

CLERK OF THE HOUSE OF COMMONS. The chief officer of that House is appointed by the crown for life, by letters patent. Upon entering office he is sworn before the lord chancellor "to make true entries, remembrances, and journals of the things done and passed in the House of Commons; in which duties he is aided by the clerk-assistant and second clerk-assistant. These three officers are more commonly known as "clerks at the table." The chief clerk signs all orders of the House, endorses the bills, and reads whatever is required to be read in the proceedings of the House. He is also responsible for the execution of all the official business of the House, which is under his superintendence. In the patent he is styled "Under Clerk of the Parliaments to attend upon the Commons;" whence it is inferred that on the separation of the two Houses, the under-clerk of the Parliaments went with the Commons, leaving the clerk of the Parliaments in the Upper House. His salary is 3500*l.* a year, that of the clerk-assistant 2500*l.*, and that of the second clerk-assistant 1000*l.*; but under act 4 & 5 Will. IV. c. 70, the salaries of the two first offices will be reduced to 2000*l.* and 1500*l.* respectively, on the first vacancy. (Hatsell's *Precedents*, vol. ii. p. 251; May's *Proceedings and Usage of Parliament*, p. 157 and Index.)

CLERK OF THE MARKET. [WEIGHTS AND MEASURES.]

CLERK OF THE PARISH. [PARISH CLERK.]

CLERK OF THE PARLIAMENTS is the chief ministerial officer of the House of Lords. His duties (which are executed by the clerk-assistant and additional clerk-assistant) are to take minutes of all the proceedings, orders, and judgments of the House; to sign all orders, to endorse bills, to swear witnesses at the bar, to wait upon the queen when she comes to give the royal assent to bills, and to take her command upon them; and to signify the royal assent in all cases, whether given by the queen in person or by commission. He is also sent occasionally with a master in chancery as a messenger from the Lords to the Commons in the absence of another master. Besides these and other special duties, he is charged with the general superintendence of the official establishment of the House of Lords. He is paid out of the Lords' Fee Fund, of which no account is ever given. It is understood that on the death of Sir G. Rose (aged 73) the office will not be filled up. (May's *Proceedings and Usage of Parliament.*)

CLERK OF THE PEACE is an officer attached to every county or division of a county, city, borough, or other place in which quarter-sessions are held; being the ministerial officer of the court of quarter-sessions. He is appointed by the *Custos Rotulorum* of the county, and holds his appointment so long as he shall well demean himself. In case of misbehaviour the justices in sessions, on receiving a complaint in writing, may suspend or discharge him, after an examination and proof thereof openly in the sessions; in which case the *Custos Rotulorum* is required to appoint another person residing within the county or division. In case of his refusal or neglect to make this appointment, before the next general quarter-sessions, the justices in sessions may appoint a clerk of the peace. (1 Will. III. c. 21, § 6.) The *Custos Rotulorum* may not sell the office or take any bond or assurance to receive any reward, directly or indirectly, for the appointment, on pain of both himself and the Clerk of the Peace being disabled from holding their respective offices, and forfeiting double the value of the consi-

deration, to any one who shall sue them. (Id. § 8.) To give effect to this provision, before the Clerk of the Peace enters upon the execution of his duties he takes an oath that he has not paid anything for his nomination.

The Clerk of the Peace may execute the duties of his office either personally, or by a sufficient deputy approved by the Custos Rotulorum. He or his deputy must be constantly in attendance upon the court of quarter-sessions. He gives notice of its being holden or adjourned; issues its various processes; records its proceedings; and performs all the ministerial acts required to give effect to its decisions. During the sitting of the court, he reads all acts directed to be read in sessions; calls the jurors, and parties under recognizance; presents the bills to the grand jury and receives them again; arraigns prisoners, administers oaths, and receives and records verdicts. Whenever prosecutors decline any other professional assistance, he is required to draw bills of indictment, for which, in cases of felony, he can charge 2*s.* only, but in cases of misdemeanor he may charge any reasonable amount for his service.

In addition to these general duties he has other special duties imposed upon him by different statutes, in regard to the summoning of juries, the appointment of sheriffs and under-sheriffs, the enrolment of rules of savings' banks and friendly societies, the custody of documents required to be deposited with him under standing orders of the Houses of Parliament, and other matters.

By act 22 Geo. II. c. 46, § 14, he is restrained, as being an officer of the Court, from acting as a solicitor, attorney or agent, or suing out any process, at any general or quarter sessions, to be held in the county, &c. in which he shall execute his office.

The Clerk of the Peace is paid by fees. Those chargeable upon prisoners acquitted were abolished by the 55 Geo. III. c. 50, for which he is indemnified by the county. By the 57 Geo. III. c. 91, the justices of the peace for the county are authorised to settle a table of fees, to be approved by the Judges of Assize, which may not be exceeded by the Clerk of the Peace, under a penalty of 5*l.* If he take more than is authorised by such table of fees, he will also be liable to be proceeded against at common law for extortion, and to be removed from his office by the court of quarter-sessions. The sessions cannot, however, compel the payment of these fees by summary process, nor detain the parties until they be paid, but the Clerk of the Peace is left to his remedy by action. A bill, however, is now before parliament, by which Clerks of the Peace are in future to be remunerated by salaries, payable out of the fees collected. (Dickinson's *Quarter-Sessions;* Burn's *Justice of the Peace*)

CLERKS IN ORDINARY OF THE PRIVY COUNCIL. [PRIVY COUNCIL.]

CLERKS AND SERVANTS. [SERVANTS.]

CLIENT (Cliens), supposed by some writers to be derived from the verb *clueo*; but the derivation is somewhat doubtful. From the origin of ancient Rome, there appears to have existed the relation of patronage (patronatus) and clientship (clientela). Romulus, the founder of Rome, was, according to tradition, the founder of this system; but it was probably an old Italian institution and existed before the foundation of the city. The cliens may perhaps be compared with the vassal of the middle ages. Being a man generally without possessions of his own, the client in such case received from some patrician a part of his domains as a precarious and revocable possession. The client was under the protection of the patrician of whom he held his lands, who in respect of such a relation was named patron (patronus), *i. e.* father of the family, as matrona was the mother, "in relation to their children and domestics, and to their dependents, their clients." (Niebuhr.) It was formerly the opinion that every plebeian was also a client to some patrician; but Niebuhr, in speaking with reference to the proposition that "the patrons and clients made up the whole Roman people," affirms that the proposition is only true "if applied to the period before the commonalty (plebs) was formed, when all the Romans were

comprised in the original tribes by means of the houses they belonged to." It is most consistent with all the testimony that we have, to view the Roman state as originally consisting of a number of free citizens who shared the sovereign power, and of a class of dependents, or persons in a state of partial freedom (clientes), who were attached to the several heads of houses and had no share in the sovereign power. The commonalty, or Plebs, as the writers call that class who from an early period stood in political opposition to the citizens who had the sovereign power (Patres), was of later growth, and was distinct from the Clients. The Plebeians, whatever may have been their origin, were Roman citizens, from the time that they were recognised as an order by the legislation of Servius Tullus; but they had not all the rights of the Patricians: they only attained them after a long struggle. The legislation of Servius appears also to have placed the Clients on something like the same footing as the Plebs with respect to civic rights.

There existed mutual rights and obligations between the patron and his client, of which Dionysius (*Roman Antiq.* ii. 10) has given a summary. The patron was bound to take his client under his paternal protection; to help him in case of want and difficulty, and even to assist him with his property; to plead for him and defend him in suits. The client on his part was bound in obedience to his patron, as a child to his parent; to promote his honour, assist him in all affairs; to give his vote for him when he sought any office, for it appears that the Clients had votes in the Comitia Centuriata; to ransom him when he or any of his sons was made prisoner; and to contribute to the marriage portion of the patron's daughters, if the patron was too poor to do it himself. The obligation to contribute to a daughter's portion and to ransom the patron or his sons bears some resemblance to the aids due under the feudal system. [AIDS.] The patron succeeded to his property when the client died without heirs; which was also the law of the twelve tables in the case of a freedman (*De Bonis Libertorum*, Dig. 38, tit. 2) who died intestate and left no heir (*suus heres*). Patron and client were not permitted to sue at law, or give evidence against one another; of which an intance is mentioned by Plutarch in his Life of Marius (c. 5), though the relation of patron and client was not at that time exactly what it once had been.

The relation between patron and client was hereditary; and the client had the gentile name of his patron, by which he was united to his patron's family and to the Gens to which his patron belonged.

Originally patricians only could be patrons; but when, in the later times of the republic, the plebeians had access to all the honours of the state, clients also were attached to them.

The terms patronus and libertus, or even patronus and cliens, as used in the later years of the republic, and under the emperors, cannot be considered as expressing the same relation as the terms patronus and cliens in the early ages of Rome, though this later relation was probably derived from the earlier one. When a foreigner who came to reside at Rome selected a patron, which, if not the universal, was the common practice, he did no more than what every foreigner who settled in a strange country often found it his interest to do. The relationship existing at Rome between patron and client facilitated the formation of similar relations between foreigners and Roman citizens; the foreigner thus obtained a protector and perhaps a friend, and the Roman increased his influence by becoming the patron of men of letters and of genius. (See Cicero *Pro Archia*, c. 3, and *De Oratore*, i. 39, on the 'Jus Applicationis,' the precise meaning of which, however, is doubtful. See also Niebuhr, vol. i. p. 316, &c., and the references in the notes; and Becker, *Handbuch des Röm. Alterthums*, vol. ii.)

As a Roman client was defended in law-suits by his patron, the word client is used in modern times for a party who is represented by a hired counsellor or solicitor. The term Patron is also now in use: the present meaning of the word requires no explanation.

COAL TRADE. The quantity of

coals shipped coastwise from ports of Great Britain to other ports of Great Britain and to Ireland amounted, in the year 1843, to 7,447,084 tons; and the quantity exported to the British colonies and to foreign countries in the same year was 1,866,211 tons; making an aggregate of 9,313,295 tons of coals sea-borne from the maritime districts. The market of London alone required a supply of 2,663,204 tons, for the conveyance of which 9593 ships (which make repeated voyages) were employed. The great towns of Lancashire, of the three Ridings of Yorkshire, of Nottinghamshire, Derbyshire, Leicestershire, Warwickshire, and Staffordshire, are supplied by canals or by land-carriage from collieries in the respective counties here enumerated. In 1816 it was ascertained that the quantity of coals then sent by inland navigation and by land-carriage to different parts of the kingdom was 10,808,046 tons; and the quantity must now be very much greater, not only from the increase of population, but the growth of manufactures. The quantity used in the immediate neighbourhood of the collieries is also very great. The town of Sheffield, for example, alone requires for manufacturing and domestic purposes more than half a million of tons annually drawn from collieries on the spot; and it has been estimated that the iron-works of Great Britain, most of which are situated in spots where coal is found, require every year, for smelting the ore and converting the raw material into bars, plates, &c., nearly seven million of tons. There is good reason for believing that the annual consumption of coals within the United Kingdom is not far short of 35,000,000 tons. In 1841 the number of persons in Great Britain employed in coal-mines was 118,233. In Durham there were more persons employed under ground in coal-mines than in cultivating the surface. On the 10th of August, 1842, an act was passed "to prohibit the employment of women and girls in mines and collieries, to regulate the employment of boys, and to make other provisions relating to persons working therein." No boys can be employed under ground in any colliery who are under the age of ten. This interference of the legislature was founded on an extensive inquiry by the Children's Employment Commission, which prepared three Reports that were presented parliament in 1842.]

It was long considered politic to check the exportation of coals to other countries, both through fear of exhausting the mines, and because it was imagined that our superiority as manufacturers might be endangered. A heavy export duty was accordingly levied, amounting to 17*s.* the chaldron, Newcastle measure, or 6*s.* 5*d.* per ton upon large, and 4*s.* 6*d.* the chaldron, or 1*s.* 8*d.* per ton, upon small coals. In 1831 these duties were modified to 3*s.* 4*d.* per ton upon large, and 2*s.* per ton upon small coals; and in 1835 they were repealed, with the exception of an ad valorem duty of 10*s.* per cent.; but if exported in foreign ships not entitled to the privileges conferred by treaties of reciprocity, the duty was 4*s.* per ton, whether the coal was exported to foreign countries or to British possessions. In 1842 Sir R. Peel altered the duties to 2*s.* per ton on all large coal exported to foreign countries, and 1*s.* per ton on small coals and culm; but if exported in foreign ships not entitled to the privileges conferred by treaties of reciprocity, the duty was 4*s.* per ton on large coal, and the same on small coals, culm, and cinders. In the session of 1845 Sir R. Peel, in bringing forward the budget, announced his intention of abandoning the coal-duty; and on the 12th of March it was abolished. This duty had the effect of checking the foreign coal-trade, which had been rapidly increasing for several years, and had, in fact, trebled in amount since 1835. The duty was comparatively insignificant as a source of revenue; it led to greater activity in foreign mines, and reduced the profits of the shipper of English coal, who had to meet foreign competitors.

A considerable revenue was for many years raised from all coal carried coastwise by sea from one part of the kingdom to another. When first imposed, in the reign of William III., this tax was 5*s.* per chaldron, but was raised during the war of the French revolution to 9*s.* 4*d.*, at which rate it was continued until 1824;

it was then reduced to 6*s.*, and in 1831 was wholly repealed.

Although the government has remedied the evil so far as the public revenue is concerned, the consumer is still burthened in some places with local or municipal duties, &c. Thus in the city of London the corporation was empowered, by the acts 10 Geo. IV. c. 136, and 11 Geo. IV. c. 64, to levy eight pence per ton "for providing for the payment of the interest and ultimate liquidation of monies borrowed for making the approaches to London Bridge." The produce of this tax, which in 1842 was 89,642*l.*, is mortgaged for the cost of rebuilding London Bridge and approaches. One penny per ton is levied under the act 47 Geo. III. for establishing a market for the sale of coals. This tax realized 11,521*l.* in 1842. It has been said that the means of establishing the Coal Market might have been provided without difficulty by a more economical management of some of the City departments; but it was an easier task to apply for an act of parliament to levy an additional tax. Under the act 1 & 2 Will. IV. c. 76, four pence per ton is levied "for metage by prescription and charters," making together 1*s.* 1*d.* per ton upon all coals brought coastwise to the port of London.

By letters patent granted by Charles II., the Duke of Richmond was entitled to receive 1*s.* per chaldron, Newcastle measure, on all coals shipped in the river Tyne to be consumed in England; and on the average of ten years ending 1799, the amount of that duty had been 21,000*l.* a year. On the 19th of August, 1799, the Treasury agreed with the duke for the purchase of this duty by an annuity of 19,000*l.*, which sum was charged upon the consolidated fund, to be paid quarterly. The sum issued by the Exchequer at three several periods for the purchase of a perpetual annuity of 19,000*l.* for the duke was 490,833*l.*; but the sums received by the Custom House, as the representative of the Duke of Richmond, from August, 1799, up to March, 1831, when all coasting duties ceased, exceeded the payments made from the Exchequer by 315,000*l.* The total revenue derived from the coasting duties on coals in 1830, the year preceding its repeal, was 1,021,862*l.*

A very peculiar regulation has been established by the coal-owners of the northern coal-field, called the "limitation of the vend." It is important that the consumers of coal should understand the nature and effects of this restriction; and the following account of it, by G. R. Porter, Esq., is therefore given at some length. Mr. Porter says:—"The limitation of the vend has existed, with some partial interruptions, since the year 1771. This arrangement is no less than a systematic combination among the owners of collieries having their outlets by the Tyne, the Wear, and the Tees, to raise the price to consumers by a self-imposed restriction as to the quantity supplied. A committee appointed from among the owners holds its meetings regularly in the town of Newcastle, where a very costly establishment of clerks and agents is maintained. By this committee not only is the price fixed at which coals of various qualities may be sold, when sea-borne, for consumption within the kingdom, but the quantity is assigned which, during the space of the fortnight following each order or "issue," the individual collieries may ship. Upon the opening of a new colliery, the first thing to be determined is the rank or "basis" to be assigned to it. For this purpose, one referee is appointed by the owners of the colliery, and another by the coal-trade committee, who, taking into view the extent of royalty or coal-field secured, the size of the pits, the number and power of steam-engines erected, the number of cottages built for workmen, and the general scale of the establishment, fix therefrom the proportionate quantity the colliery shall be permitted to furnish towards the general supply, which the directing committee shall from time to time authorise to be issued. The point to be attained by the owners of the colliery is to secure for their establishment the largest basis possible; and with this view it is common to secure a royalty extending over from five to ten times the surface which it is intended to work, thus burthening themselves with the payment of possibly 5000*l.* per annum, or more, of "dead rent," to the

owner of the soil, who, of course, exacts such payment in return for his concession, although his tenants may have no intention of using it. Instead of sinking one or two pits, which would afford ample facility for working the quantity which the mine is destined to yield, a third and possibly a fourth pit are sunk, at an enormous expense, and without the smallest intention of their being used. A like wasteful expenditure is made for the erection of useless steam-power; and to complete and give an appearance of consistency to the arrangements, instead of building 200 cottages for the workmen, double that number are provided. In this manner a capital of 160,000*l.* to 200,000*l.* may be invested for setting in motion a colliery, which will be allowed to raise and sell only such a quantity of coals as might be produced by means of an outlay of one-fourth or one-fifth of that amount. By this wasteful course the end of the colliery owners is attained: they get their basis fixed, if it is a large concern, as is here supposed, say at 50,000, and this basis will probably secure for them a sale of 25,000 chaldrons during the year, instead of 100,000 chaldrons, which their extended arrangements would allow them to raise. The Newcastle committee meet once a fortnight, or twenty-six times in the year, and, according to the price in the London market, determine the quantity that may be issued during the following fortnight. If the London price is what is considered high, the issue is increased; and if low, it is diminished. If the "issue" is twenty on the 1000, the colliery here described would be allowed to sell (20 × 50) 1000 chaldrons during the ensuing fortnight. The pit and the establishment may be equal to the supply of 3000 or 4000 chaldrons; orders may be on the books to that extent, or more; ships may be waiting to receive the largest quantity; but, under the regulation of the "vend," not one bushel beyond the 1000 chaldrons may be shipped until a new issue shall be made. By this system the price is kept up; and, as regards the colliery owners, they think it more for their advantage to sell 25,000 chaldrons at 30*s.* per chaldron than to sell 100,000 chaldrons at the price which a free competition would bring about. They may be right in this calculation; but if, under the system of restriction, any undue profit is obtained, nothing can be more certain than that competition for a portion of this undue profit will cause the opening of new collieries until the advantage shall be neutralized, and this result of the system is already fast approaching. Every new colliery admitted into the "vend" takes its share in the "issues," and, to some extent, limits the sales of all the rest. The disadvantage during all this time to the public at large is incontestable. . . . The owners of collieries, being restricted in their fortnightly issues to quantities which their establishment enables them to raise in three or four days, are naturally desirous of finding for their men during the remainder of the time some employment which shall lessen the expense of maintaining them in idleness, and spread over a larger quantity of product the fixed expenses of their establishments and their *dead rents.* To this end coals are raised which must find a sale in foreign countries; and it practically results that the same quality of coals which, if shipped to London, are charged at 30*s.* 6*d.* per Newcastle chaldron, are sold to foreigners at 18*s.* for that quantity, giving a preference to the foreign buyer of 40 per cent. in the cost of English coal. By this means the finest kinds of coal, which in London cost the consumer about 30*s.* per ton, may be had in the distant markets of St. Petersburg and New York for 15*s.* to 16*s.*, or little more than half the London price. Nor is this the worst effect of the system. In working a colliery a great proportion of small coal is raised. The cost to the home consumer being exaggerated, and the freight and charges being equally great upon this article as upon round coal, very little small coal finds a market within the kingdom, except on the spot where it is raised; and as the expense of raising it must be incurred, the coal-owners must of course seek elsewhere for a market at any price that will exceed the mere cost of putting it on board ship. By this means "nut-coal," which consists of small pieces, free from dust, which have passed

through a screen, the bars of which are five-eighths of an inch apart, are sold for shipment to foreign countries at the low price of 3*s.* per ton. The intrinsic quality of this coal is quite as good as that of the round coal from the same pits; it is equally suitable for generating steam, and for general manufacturing purposes; and thus the manufacturers of Denmark, Germany, Russia, &c. obtain the fuel they require, and without which they cannot carry on their operations, at a price not only below that paid by English manufacturers, but for much less than the cost at which it can be raised. The coal-owner might, it is true, sell this small coal at home at a better price than he obtains from his foreign customer, but every ton so sold would take the place of an equal quantity of large coal, upon which his profit is made, and by such home sale he would by no means lessen his sacrifice, but the reverse." (*Progress of the Nation,* vol. iii. p. 98.)

Another regulation affecting the coal trade from the Tyne and the Wear has been established by act of parliament (6 Geo. IV. c. 32), under the provisions of which every ship must be loaded in her turn; and if any colliery refuse to sell, a penalty is imposed of 100*l.*; but this regulation may be and has been evaded by the coal-owners towards ships the owners of which refuse to be bound by their regulations in the port of discharge; and the mode of evading it is to fix an exorbitant price upon their coal, which may be done although a price below the regulation is not allowed, and by this means the vessels are either brought into conformity with the regulations in the port of discharge, or forced out of the trade. The regulations here alluded to were made in June, 1834, at a meeting of the coal-factors in London, and are to this effect:—"That whenever a greater number than eighty ships reach market on any one day, the factors shall offer them for sale according to the rotation of entry; and that not more than forty of such ships shall be offered for sale on one market-day, unless the prices of best coals be 20*s.* or upwards, and in that case to be at liberty to sell such further number of ships as each factor may think proper, giving to every vessel with the same coals her fair and regular turn of sale, by which arrangements the ships will experience little or no detention, and the evil be avoided of pressing for sale at a reduced price a larger quantity of coals than the average demand of the market requires." This rule was altered as follows in January, 1835, as far as regards the number of ships the cargoes of which may be offered for sale in one market-day:—

"When the price of the best Sunderland coals has been on the previous market-day 21*s.* or less, the number of cargoes to be offered for sale shall be . 40
When 21*s.* 3*d.* or 21*s.* 6*d.* . 50
21*s.* 9*d.* or 22*s.* . . 60
22*s.* 3*d.* . . . . . 70."

Some alteration has since been made in this scale, but the principle is fully acted upon. Vessels loaded with coal for gas companies begin to work upon arrival, and also all vessels whose cargoes are for the use of the government.

In May, 1844, the harbour-master of the port of London presented a return to the lord mayor, which shows the operation of the regulations established by the coal-owners in the port of London for keeping up the price of coal. On the 1st of May there were 260 vessels laden with coal, detained in sections waiting their "turn" of sale. On one day in the same month, ten colliers had been detained, with their captains and crews, for forty-six days, and two had been detained above fifty days. On the 27th of May, 109 coal-laden ships were detained in sections, and the price of the best coal had advanced to 24*s.* and 25*s.* per ton, or about 34*s.* per ton to the consumer. "A saving of every shilling per ton on the average consumption of the metropolis is equivalent to an annual saving to its inhabitants of 150,000*l.*" (Railway Report of Board of Trade, 28th Feb., 1845.) During the winter of 1844-5, the price of coal in London has been as high as 40*s.* a ton. If the "limitation of the vend" and other restrictions on the coal trade were abolished, and there was no detention and waste of time either at the port of shipment or in London, it is believed that the best coal could be brought from Sunderland into the port of London at 15*s.* per ton, and

that 7*s.* per ton at the pit would be as remunerating to concerns working to their full power as 11*s.* with their powers limited by the vend regulations; and that a freight of six shillings per ton would be as profitable as the higher freight now paid, part of which is to cover the expense of detention.

The railways now in progress will no doubt in time have an important and most beneficial effect in reducing the price of coal in those parts of the country where it is at present so high as almost to place it beyond the reach of the poorest classes of the population. Soon after the Great North of England Railway, from Darlington to York, was opened, the price of coal at York fell to the extent of from 5*s.* to 10*s.* per ton. There will also most probably soon be a large increase in the supply of inland coal in London, as more than one of the great railway companies whose lines extend from London to the midland coal-fields have agreed to convey coal "at rates not exceeding 1*d.* per ton per mile, including toll and locomotive power." Thus the cost of conveying coal from the south of Staffordshire and Derbyshire will not exceed 10*s.* and 12*s.* a ton; and such coal may then be sold with a profit in London at 20*s.* per ton. Whether in time the opening of additional sources for the supply of coal will have an effect on the restrictions of the coal-owners of the north, cannot of course be as yet safely predicted.

The statistics of the coal-trade are given for the sake of distinctness under the following heads:—1. Coasting Trade. 2. Coal Trade of the Port of London. 3. Foreign Trade.

1. Of 7,447,084 tons of coal shipped at the several ports of the United Kingdom, to other parts of the United Kingdom, in 1843, the shipments from fifteen ports exceeded 70,000 each, viz.:—

	Tons.
Newcastle	2,289,591
Stockton	1,446,069
Sunderland	877,451
Newport	495,419
Swansea	401,893
Whitehaven	300,498
Cardiff	267,303
Goole	175,735
Llanelly	170,608
Irvine, N. B.	169,542
Maryport	124,700
Borrowstoness	91,174
Alloa	86,606
Gloucester	84,773
Ayr	71,015

2. The quantity of coal and the number of ships, including their repeated voyages, in which the same was brought into the port of London in each year, from 1832 to 1844, were as follows:—

Years.	Ships.	Tons.
1832	7,528	2,139,078
1833	7,077	2,020,409
1834	7,404	2,078,685
1835	7,958	2,298,812
1836	8,162	2,398,352
1837	8,720	2,626,997
1838	9,003	2,581,085
1839	9,340	2,625,323
1840	9,132	2,566,892
1841	10,311	2,909,144
1842	9,691	2,723,200
1843	9,593	2,628,520
1844	9,466	2,490,919

The monthly arrivals in the port of London in 1844 were as under; but from April to August there was a strike for wages amongst the colliers, and this circumstance affected the regularity of the supply:—

Ships.		Tons.
799	Jan.	224,633
741	Feb.	205,746
977	March	270,771
751	April	198,674
405	May	84,993
551	June	132,238
517	July	144,130
795	Aug.	192,231
1220	Sept.	319,295
1283	Oct.	337,518
1066	Nov.	296,381
291	Dec.	88,330
9466		2,490,919

The quantity which arrived by inland navigation, in 1843, was 34,684 tons.

The quantity of each particular sort of coal which arrived in the port of London is certified by the Fitters; and, in 1844, was as follows:—

	Ships.	Tons.
Newcastle Wallsend	1,428	424,548
Other Newcastle Coal	1,757	577,073
Sunderland Wallsend	2,149	611,662
Other Sunderland Coal	109	28,064
Stockton Wallsend	1,877	482,807
Other Stockton Coal	109	22,016
Scotch Coal	354	66,347
Blyth Coal	313	76,361
Yorkshire Coal	945	94,199
Welsh Coal	318	83,039
Culm	7	1,568
Cinders	54	13,150
From Sundry Places	5	424

3. In 1842 the declared value of 1,999,504 tons of coal exported to foreign countries and British possessions was 734,000*l.*; in 1843 the declared value of coal thus exported was 690,424*l.*, and in 1844 665,584*l.* In 1843 the exports of coal to foreign countries and the colonies were, 815,434 tons from Newcastle, 305,991 tons from Sunderland, and 224,593 from Stockton; or 1,346,018 out of 1,866,211 tons exported in that year.

The exports of coal to foreign countries only have been as follows in the undermentioned years:—

Years.	Tons.	Duty.
1828	228,681	£34,540
1829	244,330	37,170
1830	359,886	56,432
1831	359,039	51,082
1832	415,247	56,507
1833	449,655	64,795
1834	432,406	34,815
1835	548,574	5,340
1836	716,961	8,705
1837	865,774	10,153
1838	1,052,272	7,342
1839	1,192,896	8,587
1840	1,307,722	6,664
1841	1,500,701	10,697
1842	1,647,450	57,884
1843	1,547,297	132,609

The following table shows the principal foreign countries to which coal from the United Kingdom was exported in 1838 and 1843:—

	1838. Tons.	1843. Tons.
France	334,563	462,941
Holland	149,137	153,632
Germany	89,701	153,099
Prussia	60,401	148,197
Denmark	105,109	137,268
Russia	68,051	116,041
Spain	9,049	64,009
Italy	26,709	48,854
Turkey and Greece	33,224	41,504
United States of N. America	57,175	33,948
Foreign West Indies	7,097	30,008
Portugal	34,550	29,057
Sweden	23,690	25,961

In addition to the above, the quantity of coal exported to British possessions in the four years from 1840 to 1843 was—

	Tons.
1840	298,591
1841	347,593
1842	352,054
1843	318,914

In the last of these years the Channel Islands took 80,413 tons; the British West Indies, 74,889 tons; British North America, 67,939 tons; Malta, 37,935 tons; East Indies and China, 30,087 tons.

The quantity of coal raised in France increased 2,744,590 tons from 1814 to 1841, or 412 per cent., and between 1836 and 1841 the increase was 34 per cent. The number of mines in 1841 was 256, and the quantity raised was 13,321 tons each; in 1836 the average of each mine in France was 9863 tons. Each person employed in coal-mines (29,320) raises, on an average, 116 tons a year. The quantity raised in each of the undermentioned years was as follows:—

	Tons.
1814	665,610
1826	1,301,045
1836	2,544,835
1841	3,410,200

The export of coal from France has never reached 50,000 tons in one year. The importation has been constantly increasing, notwithstanding the great addition to the domestic supply. In 1814 the quantity of coal imported into France was 165,345 tons; 505,180 tons in 1826;

999,452 tons in 1836; and 1,619,160 tons in 1841; and of the quantity last mentioned 992,226 tons were received from Belgium, 196,502 from the Rhenish provinces of Prussia and Bavaria, and 429,950 from the United Kingdom. The import duty on sea-borne coal was reduced in 1834 from a uniform rate of fifteen francs per ton, to three, six, and ten francs per ton, according to the district into which it was imported; and on coal brought by land-carriage the duty was reduced from three francs to one-half that amount. In 1841 the increase of imports was 130 per cent., and the productiveness of the French mines had in the same time increased 65 per cent.

(*Mining Industry in France*, by G. R. Porter, Esq., F.R.S.; *Journ. of Lond. Stat. Soc.*, No. 6, 1838, and part iv. vol. vii., Dec. 1844.)

In Belgium there are 352 coal-mines. The Belgian coal is conveyed inland into France as far as Rouen, where it comes into competition with English coal. In 1834 the quantity of coal raised in Prussia was 1,810,000 tons; and in 1839 the quantity had increased to 2,442,632 tons. The coal from the Rhenish provinces comes down the Rhine into Holland, and it also enters into competition with English coal. In 1837 the produce of the coal-mines in the German Customs' Union (including Prussia) was 10,393,470 tons.

In the United States of North America there are extensive collieries in Pennsylvania. Out of 863,489 tons (of 28 bushels) of anthracite coal raised in 1840 in the North American Union, 859,686 tons were raised in Pennsylvania; and out of a total of 27,603,191 bushels of bituminous coal, 11,620,654 bushels were raised in Pennsylvania, 10,622,345 bushels in Virginia, and 3,513,409 bushels in Ohio. Nearly 7000 persons were employed in coal-mines in the United States in 1840.

CODE, CODEX. The original meaning of the Latin word Caudex or Codex was the trunk or stem of a tree. Before the use of more convenient materials, wooden tablets were employed by the ancients for writing on. Such a written tablet was called Codex, of which Codicillus is a diminutive. First they wrote by making notches or indents in these tablets, but afterwards they covered them with wax, and used a style to write with.

The notion of the word was then extended, and it had several new significations. 1. Codex denoted any hand-writing on parchment, or paper, or ivory, or other material (*Dig.* 32, s. 52). 2. The diminutive Codicilli (codicil) was used in the plural number in various senses, and finally in that of a testamentary writing. 3. A collection of laws was also called Codex, and is now called a Code in modern languages, as in English and French. In this sense the word is now most commonly used. There are several kinds of codes. A code may be made by merely collecting and arranging in a chronological or systematic order the existing laws of a state, which have been made at various times by the sovereign power. Such a collection is either made by public authority, as was the case with the Codex Theodosianus and Codex Justinianeus, or by private individuals, as was the case with the Codex Gregorianus and Hermogenianus. The Germans call collections of old German laws, made in the middle ages, "Rechtsbücher" (books of law). A code (in German *Gesetzbuch*, book of laws), by which the legislative power makes a new system of laws, is very different from a compilation of existing laws. A mere arrangement and classification of existing laws is more properly called a Digest (Digesta), which is the Roman name for one of Justinian's legal compilations. If to this classification and arrangement selection be superadded, it would still be properly only a Digest. A code, though it may adopt many existing laws and customs, is now generally used to express a new system, founded on new fundamental principles; such principles, for instance, as are set forth in Bentham's 'Leading Principles of a Constitutional Code for any State.' In England, for example, if it were proposed to make a code in the modern sense, it might be found useful or necessary to modify the law of tenures, or to abolish certain kinds of tenures, such as customary tenures; and also to provide positive rules for numerous cases that are still either unprovided for or left doubtful

by conflicting decisions, or decisions regarded as of little authority.

CODES, LES CINQ, is the name given to several compilations of laws, civil and criminal, made in France after the revolution, and under Bonaparte's administration. They consist of the Code Civil, Code de Procédure Civile, Code de Commerce, Code d'Instruction Criminelle, and Code Pénal. To these has been added the Code Forestier, or regulations concerning the woods and forests, promulgated under Charles X. in 1827. Hence the whole collection is sometimes called 'Les Six Codes.' But even this name is not correct, as, in addition to the six already mentioned, there are the following codes: Code Administratif; Code de l'Armée; Code des Avocats; Code de la Chasse; Code de la Contrainte par Corps; Code des Contribuables; Code des Cultes; Code Electoral; Code de l'Enregistrement (which includes the Stamp laws); Code de l'Expropriation par Cause d'Utilité Publique; Code des Frais, for regulating the official charges of courts of law; Code de la Garde Nationale; Code de l'Instruction Publique; Code Municipal et Départemental; Code des Officiers Ministériels (advocates, notaries, &c.); Code des Patentes; Code de la Pêche Fluviale; Code des Poids et Mesures; Code de la Police Médicale; Code de la Presse; Code de la Propriété Industrielle et Littéraire; Code Rural; Code des Tribunaux; Code de la Voirie (rivers, canals, highways, streets, and public vehicles). The Charte of 1830 is sometimes called the Code Politique.

Civil Code.—The old laws of the French kingdom were founded partly on the Roman law, partly on the customs of the various provinces, and partly on the ordinances of the kings. Having been abrogated at the Revolution, several attempts were made, by Cambacérès among others, to form a code adapted to the altered state of society; but the fury of the internal factions, the cares of foreign war, and the frequent changes of rulers, prevented any calm deliberation on the subject during the first years of the Revolution. After Bonaparte became First Consul, he appointed, in 1800, a commission, consisting of Tronchet, president of the Court of Cassation, Bigot de Préameneu, Portalis, and Malleville, to draw up a project of a civil code. The project was printed early in 1801, and copies were sent to the different courts of France for their observations and suggestions. The observations and suggestions were likewise printed, and the whole was then laid before the section of legislation of the council of state, which consisted of Boulay, Berlier, Emmery, Portalis, Roederer, Réal, and Thibaudeau. Bonaparte himself, and Cambacérès, his colleague in the consulship, took an active part in the debates. The various heads of the code were successively discussed, after which they were laid before the tribunate, where some of the provisions met with considerable opposition. The code, however, passed at length both the tribunate and the legislative body, and was promulgated in 1804 as the civil law of France—'Code Civil des Français.' Under the empire its name was changed into that of Code Napoléon, by which it is still often designated, though it has now officially resumed the original title of Code Civil. This code defines the civil rights of Frenchmen, and their legal relations to each other and to society at large. In its general arrangement and distribution it resembles the Institutions of Justinian. It consists of three books, divided into titles or heads, each of which is subdivided into chapters and sections. Book I., in eleven heads, treats of persons; specifies their civil rights; regulates the means by which their rights are certified; prescribes the mode of registering births, marriages, and deaths; defines the conditions which constitute the legal domicile of each individual; and provides for cases of absence. It treats of marriage as a civil contract, the forms required, the obligations resulting from it, and lastly, of separation and divorce. The articles concerning divorce, which gave rise to much debate and opposition at the time, have been repealed since the Restoration, and separation alone is now allowed. The code proceeds to treat of the relations of father and son, of legitimate and natural children, of adoption and guardianship, and of paternal power. Under this last head, the

French code, without adopting the rigid principle of the old Roman law in its full extent, gives to a father the right of imprisoning his son during his minority for a term not exceeding six months, by a petition to that effect, addressed to the president of the local court, who, after consulting with the king's attorney, may give the order of arrest without any other judicial forms being required. The remaining heads treat of minority and emancipation; majority, which is fixed, for both sexes, at 21 years complete; of interdiction, and of trustees who are appointed in certain cases to administer the property of a man who is incapable of doing it himself. Book II. treats of property. The 1st head draws the distinction between *meubles* and *immeubles*, or personal and real property; though these two words do not exactly express, to an English lawyer, the distinction between *meubles* and *immeubles*. The 2nd defines the different rights of ownership. The 3rd treats of usufruct, use, and habitation. The 4th concerns rural servitudes, the *prædiorum servitutes* of the Roman law: all former personal servitudes were abolished at the Revolution. Book III. treats of the various modes by which property is legally acquired, such as inheritance, donation inter vivos, and wills or testaments. A father can dispose by testament of one-half of his property if he has only one legitimate child, of one-third only if he has two, and of one-fourth if he has three or more. The law then proceeds to treat of contracts, and specifies the modes of proving them by written documents, official or private, or by witnesses, or lastly by presumption. The 5th head treats of marriage, and the respective rights of husband and wife according to the terms of the marriage contract. Next come the heads of sales, exchanges, leases, partnerships, loans, deposits, and sequestration. The 12th head concerns the contracts called aléatoires, which depend in a great measure upon chance, such as insurance, annuities, &c. The law treats next of power of attorney, of bail and security, and of amicable compromise. The 18th head concerns privileged creditors and mortgages. This subject is very elaborately treated, and has been much extolled as a very valuable part of the Civil Code, on account of the security which it gives to property by means of the public offices for registering mortgages, of which there is one in every district. The registration of mortgages has been adopted in most of the Italian states, and other countries besides France; but even this system is not considered perfect, because there is no obligation to register every sale or transmission of property, nor the servitudes affecting property; and because the French code admits of sales by private contract, and of mortgages in favour of minors or wives, even without registration. In this particular the Austrian code is considered superior, because it enforces the registration of every transmission of property, and of every burthen or servitude, in the book of census, or cadasto, for each district. (Grenier, *Traité des Hypothèques*, 1824: *Introduction.*) The nineteenth head of the French civil code treats of expropriation or seizing, or selling off by execution; and the twentieth, or last, of prescription.

Much has been written on the merits and defects of this celebrated code. In order to judge of its value, we ought to read the reports of the discussions in the council of state by the most distinguished jurists of France. (Locré, *Esprit du Code Napoléon tiré de la Discussion*, 6 vols. 8vo., 1805; and Malleville, *Analysis raisonnée de la Discussion du Code Civil au Conseil d'Etat*, 4 vols., 8vo., 1807.) On the other side, several distinguished German jurists have pointed out its imperfections. (Savigny, *On the Aptitude of our Age for Legislation*, translated from the German by a barrister of Lincoln's Inn; Rehberg, *Ueber den Code Napoleon*, Hanover, 1814; Thibaut, Schmidt, &c.) With regard to the part which Bonaparte took in its discussion, not as a professional man, but as a quick-sighted observer and critic, a lively account is given in Thibaudeau's *Mémoires sur le Consulat*, in which his own original expressions are preserved.

Code de Procédure Civile.—The Code de Procédure is divided into two parts. The first part treats of the various courts: 1st. Of the justices of peace and their

jurisdiction. There are about 2840 of these magistrates in France, whose powers are very similar to those of magistrates in England in matters of police; but they also decide petty cases not exceeding 200 francs, and in certain cases not exceeding 100 francs their decision is without appeal. They also act as conciliators between parties at variance, who are not allowed to take proceedings in a court without having first appeared before the juge de paix. 2nd. Of the process before the tribunaux de première instance, which try civil cases without jury. There is one of these courts in every arrondissement. 3rd. Of appeals to the Cours Royales, of which there are 27 established in the larger towns, each having several departments under its jurisdiction: these courts try cases by jury. 4th. Of various modes of judgment. 5th. Of the execution of judgments. The second part treats of the various processes for the recovery of property, separation between husband and wife, interdiction and cession of property by an insolvent debtor. Foreigners are excluded from the benefit of the *cessio bonorum*. The code then passes to the subject of inheritance, the affixing of seals, taking inventories, &c. The last book treats of arbitration.

The Code de Procédure was in great measure founded on the ordonnance promulgated in 1667 by Louis XIV., but with considerable ameliorations. It was framed by a commission appointed in 1800, then discussed in the council of state and the tribunate, and lastly passed by the legislative body. It was put in force in January, 1807. The expenses, duties, fees, &c. attending civil process are now regulated by the Code des Frais. The principal reproach made against the Code de Procédure is the multiplicity of formalities, written acts, registrations, stamps, &c. Another objection is, that in actions in which the state is concerned, it has advantages over private parties. But the publicity of the discussions, the security to all civil proceedings by means of registration, the well-defined authority of the various courts, the independence of the judges, and the establishment of local courts all over the country, and above all the institution of the supreme Court of Cassation—these are essential and lasting advantages.

The *Code de Commerce* was promulgated in January, 1808. It was founded in some measure upon the ordonnances of 1673-81 of Louis XIV. On account of the many modifications which the Code of 1805 had undergone, a new text of the Code was promulgated in January, 1841. The Code de Commerce is considered the best part of French legislation. The institution of the commercial tribunals has been of great advantage to France, and has been adopted in other countries. These courts, of which there are 213, consist of a president and two or more judges, all chosen by the merchants among themselves, and for a limited time; they are not paid, but the greffier or registrar receives a salary. The Code de Commerce consists of four books: the first treats of commerce in general, of the various descriptions of commercial men, of the keeping of books, of companies and partnerships, of brokers, commissioners, carriers, &c.; the second treats of maritime commerce, shipping, insurances, bankruptcy, &c.; the third concerns bankruptcies; and the fourth treats of the commercial tribunals, their jurisdiction and proceedings. By a law of April, 1838, appeals in matters above 1500 francs (formerly 1000 francs) lie to the Cour Royale of the district.

Code d'Instruction Criminelle.—The criminal laws of France under the monarchy were defective, confused, and arbitrary. There was no penal code, but there were various ordonnances for the punishment of particular offences. The ordonnance of Louis XIV. for regulating proceedings in criminal cases introduced something like uniformity, but it maintained torture and secret trial. Torture was abolished by Louis XVI. The first National Assembly in 1791 recast the criminal legislation, introduced the trial by jury, and remodelled the criminal courts after those of England. Bonaparte, when First Consul, appointed a commission, consisting of Viellard, Target, Oudard, Treilhard, and Blondel, to frame a criminal code. The fundamental laws were drawn up in 1801, and were then discussed in the council of state. Bonaparte took a lively part in these first discussions,

especially on the institution of the jury, which he strongly opposed on the ground of the probable incapacity or party spirit of jurors: he looked upon the question in a political rather than a judicial light. Portalis, Simeon, Bigot de Préameneu, and Ségur sided with Bonaparte. Treilhard, Berlier, Defermon, Crétet, Bérenger, Merlin, and Louis Bonaparte defended the jury. There is an interesting account of this discussion in Thibaudeau (vol. vii. pp. 88, &c.). The question being put to the vote, the majority was in favour of the jury. The matter, however, was finally settled by suppressing the jury d'accusation, or grand jury, and retaining the jury de jugement. The jurors are taken from the electors who are qualified to vote for a member of the legislature, graduates in law, medicine, and other sciences, notaries, members of the Institute, and of other learned bodies recognised by the State, officers on half-pay who have been domiciled for five years in the department, and whose pay amounts to 1200 francs a-year, &c. A list of persons so qualified is made out by the prefect of the department, from which the President of the Cour Royale, or of the Cour d'Assise, selects the number required to serve. The proceedings in criminal trials are partly written and partly oral. The accused is first brought before the procureur du roi (king's attorney), who examines him, and simply reports the case to the juge d'instruction, without giving any opinion upon it. At the same time, if the accused is charged with a crime punishable with personal and degrading penalties, he orders his detention. For mere délits or misdemeanors, bail is allowed. The juge d'instruction summons and examines the witnesses, and then sends back the report to the procureur du roi, who makes his remarks on the case, which is then laid before the chambre de conseil, consisting of three judges of the tribunal de première instance. These judges investigate the case minutely, and decide if there is ground for further proceedings. In such case the report is laid before the chambre d'accusation, composed of five judges of the Cour Royale, who ultimately decide for commitment or acquittal. If committed for a crime punishable by peines afflictives or infamantes, the prisoner takes his trial before the next cour d'assise of the department. If for mere délit or misdemeanor, he is sent before the correctional tribunal. The courts of assize consist of two of the judges of the Court of First Instance of the town, and the president is a member of the Cour Royale of the department. Their sessions are held every three months in the chef lieu of each department. The jury vote by ballot, and decide by a majority on the fact of the charge; eight constitute a majority. The mode of voting was regulated by a new law, May, 1836. The court then awards the sentence, having a discretion between a maximum and a minimum penalty. By a law passed in 1831 the court was prohibited from setting aside the verdict of the jury and referring the case to a new trial; but by the law of September, 1835, the judges can order the case to be tried at the next assizes by a new jury, when they must pronounce sentence according to the verdict, although it may not differ from that of the first jury. The prisoner may challenge twelve jurors. One or two juges d'instruction are attached to each court of assize for criminal cases; they are generally taken from among the juges de première instance, and for a definite time only. The Code d'Instruction Criminelle consists of the following books: 1. Of the judiciary police and the various officers whose duty it is to inquire after offences, collect the evidence, and deliver the prisoners to the proper courts. These officers are very numerous, including the maires and their assistants, the commissaries of police, the rural guards and forest-keepers, the justices of the peace, the king's attorneys and their substitutes, the juges d'instruction, &c. It also treats of the manner of proceeding by the king's attorney, as already stated; and of the juge d'instruction and his functions. Book 2 treats of the various courts; tribunaux de simple police, which take cognizance of petty offences, and can inflict imprisonment of not more than five days, and a fine not exceeding fifteen francs; tribunaux en matière correctionelle, which are composed of at least three judges of the tribunaux de première instance, and take cognizance of délits or misdemeanors,

the penalties for which are defined in the Code Pénal; and cours d'assise, already mentioned, from which there is an appeal for informality or want of jurisdiction to the Court of Cassation. The cours spéciales, or exceptional courts, which Napoleon insisted upon having at his disposal, and which were often resorted to after the Restoration, are abolished by Art. 54 of the Charte of 1830. These special courts were assembled in cases of armed rebellion against the authorities, and they also took cognizance of the offence of coining, and of crimes committed by vagabonds and convicts who have escaped; they were composed of a president taken from among the judges of the Cour Royale, four judges, and three military officers of the rank of captain or above. They tried without jury, judged by majority and without appeal, and the sentence was executed within twenty-four hours. The Chamber of Peers, by virtue of Art. 28 of the Charte, sits as a court of justice in matters of high treason and attempts against the safety of the State. On the subject of the Code d'Instruction, Thibaudeau observes that it retained many of the ameliorations introduced by the National Assembly, especially the publicity of trial and the institution of the jury. Its chief faults are, the great number of officers, whose business it is to follow up offenders, by which circumstance the citizens are often exposed to vexatious interference; the too great extent given to the jurisdiction of the correctional courts, by which, in many cases, the citizens are deprived of the security of the jury; the restrictions on the choice of jurors, which is too much in the power of prefects and other local authorities; and, lastly, the frequent abuse of the power of the police, by which its agents could issue warrants of arrest. This last abuse is now corrected, or at least greatly mitigated. Other provisions of the Code d'Instruction, as well as of the Penal Code, have been also altered for the better by the law of April 28, 1832, entitled 'Modifications aux Codes d'Instruction Criminelle et Pénal,' which is found at the end of the later collections of the French codes.

The *Code Pénal*, or the laws that define crimes and punishments, was completed in January, 1810. Its discussion occupied forty-one sittings of the Council of State. Of these sittings Napoleon attended only one (21st January, 1809). Cambacérès presided at all the rest. "Napoleon was therefore a stranger to its discussions; he only expressed an opinion that the laws ought to be concise, and leave much latitude to the judges and the government in the application of the penalty, 'because,' said he, 'men had feelings of compassion unknown to the law.' He insisted upon the penalty of confiscation being retained in certain cases, because most nations had sanctioned it in cases of conspiracy, rebellion, and false coining. But the definition of crimes and offences, the nature of the penalties, and the mode of their application, were the work of criminal jurists, who were generally inclined to severity, and were well acquainted with the ideas of Napoleon, who was persuaded that criminal legislation ought to be very rigorous in order to maintain order and support the authority of the government." (Thibaudeau, vol. viii. p. 3.) Hence the penalty of death was fixed in numerous cases, and those of perpetual imprisonment, hard work, or transportation for life, in a still greater number. The pillory is also one of the punishments.

If we look at book iii. ch. 1, which treats of the crimes and offenees against the safety of the State (a term susceptible of indefinite and arbitrary application), we find that the penalties of death and confiscation are fixed very generally. Confiscation, however, has been abolished by a law passed under Louis XVIII. By the head "Des critiques, censures, ou provocations contre l'autorité publique dans un discours pastoral," any clergyman found guilty of having, in a pastoral charge, sermon, or other public address, spoken or printed, criticised or censured any act of the government authorities, is subject to banishment, transportation, and even death, according to the consequences which have resulted from his act. The following head, "Résistance, désobéissance, et autres manquemens envers l'autorité publique," is equally severe. The article "Délits commis par la voie d'écrits, images ou gravures, distribués sans nom de l'auteur," &c., concerns the press, which was

under a strict censorship in Napoleon's time. Since the Restoration the censorship has been abolished, and several laws have been enacted to repress abuses of the press, especially in April and October, 1831. The last law on this subject was promulgated in September, 1835, and consists of five heads: 1. Crimes, délits, et contraventions. 2. Du gérant (editor) des journaux ou écrits périodiques. 3. Des desseins, gravures, lithographies, et emblêmes. 4. Des théâtres, et pièces de théâtre. 5. De la poursuite et du jugement. By the section of the Penal Code entitled "Des Associations ou Réunions illicites," which continues in force to this day, every association of more than twenty persons for the purpose of meeting on fixed days to discuss either political, religious, literary, or other subjects, is declared illegal, unless the approbation of the government is obtained, which can prescribe conditions and fix regulations at its pleasure. The chiefs or directors of any such illegal association are punished by fine. If at the meetings of such assemblies there has been any provocation to crimes or délits, as defined in the other articles of the Penal Code, the chiefs or directors and administrators are liable to imprisonment from three months to two years, besides fine, although they themselves may not have been guilty of the offence. No individual can lend his house or apartments for the meeting even of an authorized association, unless with the permission of the municipal authorities. By a law which passed the Chambers in April, 1834, the above regulations have been made even more strict. Every member of an illegal association is liable to a fine of 1000 francs, and to imprisonment from two months to one year. Under the heads "Vagabondage" and "Mendicité," vagrants are defined to be all those who have no fixed domicile nor means of subsistence, and who do not follow habitually any trade or profession. On the legal evidence of being such, they are condemned to an imprisonment of from three to six months, after which they are under the surveillance of the police for periods varying from six months to ten years. With regard to mendicants or beggars, any person found begging in a place where there is a workhouse or depôt for the poor is subject to from three to six months' imprisonment. In places and cantons where there is no depôt for the poor (which is the case in most rural districts of France), able-bodied beggars may be imprisoned for a period of from one to three months; and if arrested out of the canton where they reside, they are imprisoned for a term of from six months to two years. By Art. 402, fraudulent bankrupts may be punished by imprisonment with hard labour, and bankrupts not fraudulent are liable to imprisonment from one month to two years. Fraudulent brokers are condemned to hard work for a time. The law of France makes a wide distinction between native and foreign insolvents. Foreigners not domiciled in France, having no commercial establishment or real property there, are liable to double the period of imprisonment that a Frenchman is, but it must not exceed two years for a debt less than 500 francs; four years for a higher sum under 1000 francs; six under 3000; eight for less than 5000; and ten years for 5000 and upwards. (Okey, *Concise Digest of the Law, Usage, and Custom affecting the Commercial and Civil Intercourse of the Subjects of Great Britain and France.* There is also a useful epitome of the French law as it affects British subjects in Galignani's *Paris Guide.*) By the head "Violations des réglemens rélatifs aux manufactures, au commerce, et aux arts," any coalition between masters to lower wages is punished by a fine of from 200 to 3000 francs, besides imprisonment not exceeding a month. Coalition among workmen, followed by an attempt to stop the works of a manufactory, is punished by imprisonment of from one to three months; the leaders or originators of the coalition or attempt are subject to imprisonment from two to five years. By Art. 417, any one who, with the view of injuring French industry, has removed to a foreign country the workmen or clerks of a manufactory, may be imprisoned from six months to two years, besides paying a fine of from 50 to 300 francs. Art. 418: Any director, clerk, agent, or workman, of a manufactory, who communicates to foreigners or to Frenchmen residing

abroad any secret of the fabric in which he is employed, is punished by a fine of from 500 to 20,000 francs, besides imprisonment at the discretion of the court. Art. 421: All wagers or bets upon the rise or fall of the public funds are punishable by imprisonment from one month to one year, besides a fine of from 500 to 10,000 francs. The offenders may after the expiration of their imprisonment be placed by sentence of the court under the surveillance of the police from two to five years. This sentence, "placed under the surveillance of the high or government police," which is added at the end of numerous penalties, means that the person so placed is to give security for his good conduct; in default of which he is "at the disposal of government," who may fix a particular place for his residence. All individuals who have undergone the punishment of imprisonment and hard labour for a time, or that of banishment or transportation, or those who have suffered a penalty for political crimes, are placed under the surveillance of the high police for the rest of their lives.

The above extracts are sufficient to show the spirit in which the French criminal code has been framed. It is, in fact, as harsh and illiberal in many of its enactments as that of any absolute government in Europe. In speaking therefore of Napoleon's legislation, it is necessary to discriminate between the civil and the criminal law; and again between the laws themselves and the practice and rules of proceeding in the courts. The adoption of the French criminal code met with great opposition in Italy. At Milan the legislative body attempted to modify and adapt it to the habits and wants of the Italians. Two commissions were appointed by the minister of justice, one for the code of instruction, and the other for the code pénal. Their reports were sent to Paris, but were rejected by Napoleon, and an answer came with peremptory orders to translate literally and enforce the two French codes without any alteration. At Naples similar objections were also made, but with no better effect. (Colletta, *Storia del Reame di Napoli*, book vi.)

The French code is retained in Rhenish Prussia; in the kingdom of Naples with some few modifications; in the Canton of Geneva in Switzerland; and in Belgium. The commercial code and the registry of mortgages have been adopted all over Italy.

For comments and strictures by French jurists on the criminal laws of France, see Bérenger, *De la Justice Criminelle en France*, 1818; Dupin, *Observations sur plusieurs points importans de notre Législation Criminelle;* and Bavoux, *Leçons préliminaires sur le Code Pénal*, 1821.

There are in France more than 3000 judges, including those of the commercial courts, besides 2846 juges de paix. The judges of the Tribunaux de Première Instance have salaries varying from 2000 to 6000 francs; those of the Cours Royales, from 3000 to 8000. The presidents and vice-presidents receive more in proportion. The juges de paix receive about 800 francs, besides certain fees. The various courts, magistrates, greffiers, &c. cost the state about fifteen millions of francs annually. (Goldsmith, *Statistics of France*, 1832.)

For a general view of the judiciary system of France, see Meyer, *Esprit des Institutions Judiciaires*, last vol.; and Rey, *Des Institutions Judiciaires de l'Angleterre comparées avec celles de France et de quelques autres Etats*, 1826.

CODICIL. [CODE; WILL.]

CODIFICATION. [LAW AND LEGISLATION.]

COFFEE TRADE (French, *Café;* German, *Koffe, Koffebohnen;* Dutch, *Koffy, Koffebomen;* Italian, *Caffé;* Spanish, *Café;* Turkish, *Chaube;* Swedish, *Koffe;* Russian, *Kofé*). This great branch of commerce has been wholly created since the beginning of the eighteenth century. Nearly all the coffee which now comes to Europe is the produce of trees propagated from a single plant, which, having been raised from seed procured from Mocha in Arabia by Van Hoorn, governor of Batavia, was sent by him to the botanical garden at Amsterdam, and the progeny of which was, in the year 1718, twenty years after its reception from Java, sent to Surinam.

There is a table by Mr. M'Queen in

the appendix to the Parliamentary Report on the Produce of India, which purports to show the quantity of coffee produced in the various countries of its growth; but there scarcely exist accurate data for such information, and the table in question is confessedly only an approximative estimate. The total quantity of coffee produced in all countries is stated to be 359,000,000 lbs. (3,205,351 cwts., or 160,267 tons); but Ceylon, from which in 1844 we received 138,846 cwts., is not given in the table; and the total production of British India, from which in 1841 we imported 15,896,624 lbs., is set down at 6,245,000 lbs. The declining production of coffee in the British West Indies, though favoured by a differential duty, rendered it necessary to admit the coffee of some other region on equally favourable terms, and in 1835 East India coffee was admitted on the same terms as West India. The imports from the East Indies increased from 5,182,856 lbs. in 1835 to 15,896,624 lbs. in 1841; and the coffee of Ceylon increased from 1,870,143 lbs. in 1835 to 15,550,752 lbs. in 1844. From 1831 to 1834 the annual imports of British West India coffee averaged above 21,000,000 lbs.; and in 1841, 1842, and 1843, they did not reach 10,000,000 lbs. In 1843 they were only 8,530,110 lbs.

In 1824 the consumption of coffee in the United Kingdom was 8,262,943 lbs., and the duties were—

On foreign coffee . .	2*s.* 6*d.* per lb.
East India . .	1 6
British West India	1 0

In 1824 there was consumed

Of foreign coffee . .	1,540 lbs.
East India . . .	313,513
West India . . .	7,947,890

In 1825 Mr. Huskisson reduced the duties on

Foreign coffee to . .	1*s.* 3*d.* per lb.
East India . . .	0 9
West India . . .	0 6

The consequence was a rapid increase in the consumption, which in 1830 was 22,691,522 lbs. In 1835 there was consumed

Of foreign coffee . .	2,126 lbs.
East India . .	5,596,791
West India . .	17,696,129

The consumption having overtaken the supply of those kinds of coffee which were admissable at the lowest rate of duty, had remained almost stationary for several years. At the end of 1835, therefore, the duty on East India coffee was reduced to 6*d.* per lb.; and subsequently coffee, of whatever growth, if imported from a British possession eastward of the Cape of Good Hope, or from that place, was admitted at a duty of 9*d.* Practically speaking, the duty on foreign coffee, instead of being 1*s.* 3*d.* per lb., became only 9*d.*, to which 1*d.* must be added for the cost of additional freight from the Cape of Good Hope, whither it was sent for the purpose of being transhipped for England at a duty of 9*d.* instead of 1*s.* 3*d.*, to which it would have been subject if imported direct. The quantity of coffee shipped for the Cape to be re-shipped for this country at the 9*d.* duty was estimated in 1840 at 7080 tons from Europe, 5060 tons from the foreign West Indies, 5680 tons from Brazil, and 2030 tons from Java; and the additional cost upon this quantity, in one way or other, amounted, according to Mr. Porter's calculation, to 177,000*l.* a year. He showed also that "the price of all the coffee used in this country was increased to the consumer by 28*s.* per cwt., the difference of duty, in addition to 13*s.* 7*d.* per cwt., the expense of sending coffee from Europe to the Cape and back." This increased price amounted to 533,227*l.*, but the duty of 9*d.* per lb. was received only on about half the quantity imported, and the additional sum accruing to the Exchequer was only 192,416*l.*

In 1840 the consumption was as follows:—

	lbs.	Duty.
Of East and West India . .	14,443,398	0*s.* 6*d.*
Foreign . .	14,143,438	0 9
Foreign direct	77,504	1 3

By the tariff of 1842 the duties were reduced to 8*d.* per lb. on foreign coffee, and 4*d.* on coffee from British possessions.

On the 6th of June, 1844, the duty on foreign coffee was further reduced to 6*d.* per lb. There are now, therefore, only two rates of duty, 4*d.* and 6*d.* per lb.

The influence of high and low duties is shown with great clearness in the following table, taken from Mr. Porter's 'Progress of the Nation:'—

Years.	Number of Pounds consumed.	Rate of Duty per Pound on British Plantation Coffee.		Population of Great Britain.	Average Consumption per head.		Sum contributed per Head to the Revenue.
	lbs.	s.	d.		lb.	ozs.	d.
1801	750,861	1	6	10,942,646	0	1·09	1¼
1811	6,390,122	0	7	12,596,803	0	8·12	4
1821	7,327,283	1	0	14,391,631	0	8·01	6
1831	21,842,264	0	6	16,262,301	1	5·49	8
1841	27,298,322	0	6	18,532,335	1	7·55	10½

The stock of coffee on hand in the following places, on the 1st of February, 1845, was as under:—

	Stock. cwts.	Importations, 1844. cwts.
Holland . .	847,000	1,300,000
Antwerp . .	140,000	500,000
Hamburg .	175,000	620,000
Trieste . .	57,000	232,000
Havre . .	31,000	230,000
England . .	502,000	440,000
	1,752,000	3,222,000

The shipments from these ports to one another are estimated at 350,000 cwts., which reduces the total importation to 2,972,000 cwts. This does not include the whole of the supply received in Europe. Sweden, for instance, in 1840 imported 2,519,986 lbs. from Brazil. In 1835, or within a year or two of that date, the imports into Bremen were 4500 cwts.; St. Petersburg, 2000 cwts.; Denmark, 1400 cwts.; Spain (from Cuba only), 1000 cwts.; Naples and Sicily, 640 cwts.; Venice, 320 cwts.; Fiume, 170 cwts.; but in these last-mentioned places the imports were not wholly direct from the countries of production.

In the nine months ending June 30, 1843, there were imported into the United States of North America 92,295,660 lbs. of coffee, valued at 6,346,787 dollars: the importation from Brazil was 49,515,666 lbs.; from Cuba, 16,611,987; and from Hayti, 10,811,288 lbs. The quantity of coffee re-exported during the above period was 6,378,994 lbs. There is no import duty on coffee in the United States.

For the year ending 5th Jan., 1845, the consumption of coffee in the United Kingdom was 31,394,225 lbs. (19,564,082 British, and 11,830,143 foreign); the importations were—

From British possessions	24,110,283 lbs.
Foreign „	22,410,960 „
	46,521,243 „

Since 1835 we have been gradually enlarging the sources of supply, and the consequence has been increased importation and diminution of price.

The quantity of coffee re-exported from the United Kingdom in 1844 was 6,306,000 lbs., all of which, with the exception of 155,703 lbs., was foreign. Of 9,505,634 lbs. exported in 1842, Belgium took 3,709,400 lbs.; Germany, 1,005,206 lbs.; Holland, 986,122 lbs.; Italy, 926,279 lbs.; Turkey, 850,829 lbs.; and the remainder was sent in smaller quantities to thirty-one other countries.

The price of coffee in London has been gradually declining for several years, and has fallen as follows per cwt.:—

	1839.		1845.	
	s.	s.	s.	s.
Jamaica, low middling and middling . . .	111 to	116	72 to	90
Ceylon, good ordinary .		102		52
Mocha, ordinary to fine .	110	135	40	90
Java	71	80	30	51
Brazil, ordinary to fine .	46	53	27	66

From the above statements it will be seen that coffee is an article of the first commercial importance, and in most countries it is made to yield a considerable revenue. In Holland the duty is 3*s.* 4*d.* per 100 lbs., and there is no differential duty in favour of the Dutch

colonies. In Belgium the duty is 16*s.* 8*d.* per 100 lbs.; in Austria, 42*s.* per 123½ lbs.; in France, 2*l.* 8*s.* to 4*l.* per 100 kilogrammes.

In 1835 the duty on coffee consumed in the United Kingdom was 652,123*l.*; 564,176*l.* in 1838; 373,573*l.* in 1840; and in the years ending 5th July, 1843 and 1844, 375,974*l.* and 351,101*l.*

Chicory and other substitutes for coffee are prohibited in several countries; but in England it is becoming an important article in commerce. In 1840 the quantity of raw chicory retained for home consumption was 3932 cwts.; and in the years ending 5th July, 1843 and 1844, 20,775 and 31,720 cwts. The duty of 20*s.* per cwt. was not altered by the tariff of 1842. The present value of the article is 9*s.* 6*d.* per cwt. exclusive of duty.

The effect of rendering such a beverage as coffee cheap has been attended with beneficial moral effects. In 1685 Charles II. issued a proclamation for suppressing coffee-houses, in which he speaks of "the multitude of coffee-houses lately set up in this kingdom" as being the resort of disaffected persons. The proclamation was soon withdrawn. In 1844 the number of coffee-houses in London was above 600. Thirty years ago there was scarcely one where coffee was supplied at less than 6*d.* a cup; and there were none to which the humbler classes could resort. There are now many houses (coffee-shops) where from 700 to 800 persons a day are served at the charge of 1*d.* per cup; some where 1500 or 1600 persons are served at 1½*d.*; and all these houses are supplied with newspapers and periodical publications for the use of the persons who frequent them. A few years ago the working classes had no other place but the public-house to which they could resort for refreshment.

COGNO'VIT is a plea, in an action at law, whereby the defendant acknowledges or confesses the justice of the plaintiff's demand against him (*cognovit actionem*). By this plea a trial is avoided and judgment is entered up for the plaintiff. But where the action is for damages, this judgment is not final, as the amount of damages remains to be assessed by a jury, under a writ of inquiry, which is executed by the sheriff, by the agency of his under-sheriff. When the jury have assessed the damages, the sheriff returns the inquisition, which is entered upon the roll in the form of a *postea*, and the judgment is then complete, the defendant's plea having already confessed the cause of action, and the damages having been assessed by a jury. If the action be for the recovery of a specific amount, as in an action of debt, the judgment entered up upon a plea of *cognovit actionem* is conclusive against the defendant, as it confesses the entire declaration. On this account it is a common practice for a debtor to strengthen the security of his creditor by executing a warrant of attorney to an attorney named by the creditor, authorising him to confess a judgment by a plea of cognovit in an action of debt to be brought by the creditor against the debtor for the specific sum due to him. But in order to prevent fraud, it is provided by 1 & 2 Vict. c. 110, § 9, 10, that such warrant of attorney or cognovit is of no force unless there be present an attorney of one of the superior courts, on behalf of the party who gives it, expressly named by him, and attending at his request, to inform him of the effect of the instrument before he executes it, and who must subscribe as a witness to the execution, and declare himself to be the attorney for the party. In order to make this process effectual as against the assignees of the debtor, if he should become bankrupt or insolvent, warrants of attorney and cognovits must be filed in the Court of Queen's Bench within twenty-one days after execution, or judgment must be signed or execution issued thereon within the same period. (3 Geo. IV. c. 39; 6 Geo. IV. c. 16, § 108; 1 & 2 Vict. c. 110, § 60, 61; 6 & 7 Vict. c. 66. Harrison's *Digest of Reported Cases*, titles "Bail," "Warrant of Attorney;" Stephen's *Comm.* vol. iii. p. 634.)

COHABITATION. [CONCUBINAGE.]

COINING. The numerous and complicated laws upon this subject, passed from time to time during several centuries, to protect the coin of the realm, were repealed by the 2 Will. IV. c. 34. The operation of this statute is confined to Great Britain and Ireland; and the former

are not repealed, so far as they may be in force in any part of the king's dominions out of the United Kingdom. The making or coining of money being one of the prerogatives of the crown, the counterfeiting of the king's coin was in early periods of the history of English law considered to be a usurpation upon the royal authority, and upon that principle constituted the offence of high treason both by the common law and by various statutes. By 2 Will. IV. c. 34, § 3, it is enacted, with respect to gold and silver coin, That any person falsely making or counterfeiting any coin resembling, or apparently intended to resemble or pass for, the king's current gold or silver coin, shall be liable to transportation for life, or any term not less than seven years, or to imprisonment for any term not exceeding four years. The 4th section of the act imposes the same punishment upon the offences of colouring, washing, or casing over any metal or counterfeit coin so as to pass for the genuine gold and silver coin of the realm; and of filing, washing, or otherwise altering silver coin so as to pass for gold, or copper coin so as to pass for silver or gold. By § 5, persons impairing, diminishing, or lightening the king's current gold or silver coin, with intent to make it pass for the king's current gold or silver coin, are made liable to transportation for fourteen years, or imprisonment for three years.

By § 6 of the statute it is enacted, That if any person shall buy, sell, receive, pay or put off, any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, or offer so to do, at or for a lower rate or value than the same by its denomination imports; or if any person shall import into the United Kingdom, from beyond the seas, any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, he shall be liable to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

By § 7 it is enacted, That if any person shall tender, utter, or put off any false or counterfeit coin, resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, he shall be liable to imprisonment for any term not exceeding one year; and if any person shall tender, utter, or put off any false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and such person shall, at the time of such tendering, uttering, or putting off, have in his possession, besides the false or counterfeit coin so tendered, uttered, or put off, one or more piece or pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, or shall, either on the day of such tendering, uttering, or putting off, or within the space of ten days then next ensuing, tender, utter, or put off any more or other false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, he shall be liable to imprisonment for any term not exceeding two years. And it is further declared by the same section, that if any person who shall have been convicted of any of the offences therein before mentioned, shall afterwards commit any of such offences, he shall be liable to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

By § 8 it is enacted, That if any person shall have in his custody or possession three or more pieces of false or counterfeit coin resembling, or apparently intended to resemble or pass for, any of the king's current gold or silver coin, knowing the same to be false or counterfeit, and with intent to utter or put off the same, he shall be liable to be imprisoned for any term not exceeding three years; and if any person so convicted shall afterwards commit the like misdemeanor, or crime and offence, he shall be liable to be transported for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

The above provisions relate to the pro-

tection of the gold and silver coin: by § 12 of the same statute similar provisions were made with respect to copper coin; but the penalties are transportation for seven years, or imprisonment for any term not exceeding two years.

Section 10 of the act contains a provision against making, mending, or having in possession any coining tools. The penalties are transportation beyond the seas for life, or for any term not less than seven years, or imprisonment for any term not exceeding four years.

The form of this act of parliament is a good example of the adherence to established principles. The object of the act is to protect the public interest, and to prevent people from being defrauded by the makers and issuers of base coin; and it is for the public interest that such fraud as coining should be punished with any amount of severity that is necessary to attain the object. But the offence is treated, even in the last act, as if it consisted in counterfeiting the king's coin, and not in injuring the public; and thus the legal offence is made to consist in the imitating of that coin which the king alone, by his prerogative, can make and issue; for it is an offence against the king's prerogative, whether the coin is of base metal or as good as the king's coin. The form of the act, however, accomplishes the object, just as well as if it were based on the principle of the mischief of coining; and the preservation of forms is certainly of some importance in governments of all kinds. The punishment for making coin to imitate the king's coin, even if the metal be as good as the king's, is necessary; for there would be no security for good money if anybody might make it. But some changes have been made by the act of William IV., which have brought the law nearer to its true object. Those offences against the coin which were formerly high treason are now felony; and the punishment of transportation has been substituted for the former punishment of death, a circumstance which tends to render the execution of the law more steady and efficient. [MINT.]

COLLATION. [ADVOWSON; BENEFICE, p. 340.]

COLLE'GIUM, or CONLE'GIUM (from the word Colligo, "to collect or bring together"), literally signifies any association or body of men. The word Corpus was also used in the same sense, and those who were members of a collegium or corpus were hence called corporati; from which come our terms corporation and corporators. The word Corporatio (Corporation) was also used under the Empire. The word Universitas was sometimes used as equivalent to Collegium or Corpus, but it had also the more general signification of "community," or "collective body of citizens." In the Roman polity collegium signified any association of persons such as the law allowed, and which was confirmed by special enactment or by a senatus consultum, or an imperial constitution, in which case it was called Collegium Legitimum. A collegium necessarily consisted of three persons at least. (*Dig.* 50, tit. 16, s. 85.)

In general, any association for the purpose of forming a collegium, unless it had the sanction of a senatus consultum, or of the emperor, was illegal (illicitum); but when dissolved, the members were allowed to divide the property of the association according to their respective shares. The members of a collegium were called Sodales: the terms and object of their union or association might be any that were not illegal. They could make regulations for the administration of affairs, or by-laws as we call them, provided such regulations were not contrary to law. (*Dig.* 47, tit. 22.)

A great variety of collegia (many of them like our companies or guilds) existed at Rome both before and under the empire, as we see by ancient writings and inscriptions, such as the Collegia Fabrorum, Pistorum, Pontificum, Fratrum Arvalium, Virorum Epulonum, Augurum, &c. Some of these, such as the colleges of Pontifices and Augurs, were of a religious character. These collegia possessed property as a corporate body; and in the time of the emperor M. Antoninus, if they were collegia legitima, they could take a legacy or bequest (*Dig.* 34, tit. 5, s. 20) in their corporate capacity. Collegia were allowed, as a matter of course, to have a

common chest, and an actor, syndicus or attorney, to look after their rights and interests, and appear on their behalf. (*Dig.* 3, tit. 4, s. 1.) The maxims that what was due to a university was not due to the individual members, and that the debts of universities were not the debts of the individual members, and that even though all the members were changed, the university still existed, comprehend the essential notion of a corporation as now understood. In most cases the members probably filled up vacancies in their own body.

The word Collegium was also applied to various magistrates: the Tribunes of the Plebs were called Collegium Tribunorum; and the Prætors, Collegium Prætorum. The word is also applied to the consuls, though they were only two (Liv. x. 22); and the two consuls were called Collegae with respect to one another. Varro (*Ling. Lat.* vi. 66) says that those Roman magistrates were called Collegae with respect to one another, who were elected at the same time (una lecti); and consistently with this explanation, it is stated by M. Messala (quoted by Gellius, xiii. 15), that the Censors were not colleagues of the consuls, but the Prætors were.

Besides the senses above mentioned, Collega was used to express any associate; and Collegium to express any association of individuals. Accordingly Collegia are sometimes called Societates; but the proper sense of Collegium must not be confounded with the proper sense of Societas, which is merely a partnership. The nature of Roman corporate bodies is further considered under UNIVERSITY.

In England a COLLEGE is an Eleemosynary Lay Corporation, of the same kind as an hospital, and it exists as a corporate body either by prescription or by the grant of the king. A college is not necessarily a place of learning. An hospital also is not necessarily a mere charitable endowment, but is sometimes also a place of learning, as Christ's Hospital, London.

A college is called Eleemosynary, because its object is the perpetual distribution of alms (eleemosynae) or bounty of the founder, among such persons as he has mentioned in the terms of the endowment. It is called a Lay corporation, because it is not subject to the jurisdiction of the ecclesiastical courts, or to the visitation of the ordinary or diocesan in his spiritual capacity. (Blackstone, *Comm.* i. p. 471.) These eleemosynary corporations however are generally composed of spiritual persons, and have a spiritual character; but they are considered as Lay corporations for the reason just mentioned.

The particular form and constitution of a college depend on the terms of the foundation. A college generally consists of a head, called by the various names of provost (præpositus), master, rector, principal or warden, and of a body of fellows (socii), and generally of scholars also, besides various officers or servants, according to the peculiar nature of the foundation. A college is wholly subject to the laws, statutes, and ordinances which the founder makes, and to the visitor whom he appoints, and to no others. All elections, and the general management of a college, must be in conformity with such statutes or rules. If a college does not exceed its jurisdiction, the king's courts have no cognizance, and expulsion of a member is entirely within its jurisdiction. If there is no special visitor appointed by the founder, the right of visitation, in default of the heirs of the founder, devolves upon the king, who exercises it by the great seal. When the king is founder, his successors are the visitors.

The general power of a visitor is to judge according to the statutes of a college, to expel and deprive for just reason, and to hear appeals. His precise powers are determined by the founder's statutes, and if there are any exceptions to his power, the jurisdiction in such excepted cases devolves on the king. Certain times are generally named in the statutes for visitation, but the visitor may visit whenever he is called on, for it is incident to his office to hear complaints. So long as a visitor keeps within his jurisdiction his acts cannot be controlled, and there is no appeal from him, as was decided in the well-known case of Philips *v.* Bury, or the case of Exeter College, Oxford.

(Show. P. C. 35.) A visitor is not bound to any particular forms of proceeding, and, in general, want of jurisdiction is the only ground on which he is liable to prohibition. If a visitor's power is not limited or defined, he must use his best discretion. If a power to interpret the statutes is given to any person, as to the bishop of the diocese, this will constitute him and his successors visitors. The heirs of a founder cannot alter the statutes, unless such a power is expressly reserved; and it appears, that where the king is founder, his successors cannot alter statutes without the consent of the college, unless such a power is reserved. But as to the power to alter statutes, it must be observed, that in the case of the crown at least, it has not unfrequently been done, though such a power might possibly be disputed, unless expressly reserved to the founder and his successors by the original statutes.

Whenever a visitor is appointed, the Court of Chancery never interferes with the internal management of a college; but this court exercises jurisdiction on all matters pertaining to the management of the funds, for as to the funds of a college, those who possess the legal estate are in the situation of trustees. If governors, or persons called visitors, have the legal estate, and are intrusted with the rents and profits, the Court of Chancery will make them account. In colleges, when a new foundation is engrafted on the old one, it becomes part of the old one, and subject to the same visitorial authority, unless new statutes are given with the new foundation.

The validity of all elections in colleges must be determined by the words of the founder's statutes or rules. In the disputes that have arisen on elections, the point has generally been, whether the master's concurrence is necessary, or whether a bare majority of the electors, of which electors the master is one, is sufficient. In Catherine Hall, Cambridge, fellows must be elected "communi omnium consensu, aut saltem ex consensu magistri, et majoris partis communitatis;" and it was held by Lord Eldon, upon these words and another clause which follows, that no election was valid in which the master did not concur.

The statutes of Clare Hall, Cambridge, require "that the election of a fellow shall be by the master and the major part of the fellows present;" and here it was held (A.D. 1788) that a valid election might be made without the concurrence of the master. But this interpretation is obviously wrong, and is referred to with disapprobation in the subsequent case of Queen's College, Cambridge (5 Russell).

Colleges (13 Eliz. c. 10) cannot grant leases of their land beyond twenty-one years, or three lives; and in such leases the accustomed yearly rent, or more, must be reserved, payable yearly during the term. By 18 Eliz. c. 6, in all leases made by colleges in the universities, and by the colleges of Winchester and Eton, one-third of the whole rent must be reserved in corn. The Mortmain Act of 9 Geo. II. c. 36, which has put considerable obstacles in the way of gifts of land or money to be laid out in land in England for charitable purposes, does not extend to the two universities of Oxford and Cambridge, or to colleges in the two universities, nor to gifts in favour of the scholars of Eton, Winchester, and Westminster. This statute contained a restriction as to the number of advowsons which a college in either of the universities of Oxford and Cambridge was allowed to hold; but this restriction was removed by 45 Geo. III. c. 101, having been found, as the preamble to this statute sets forth, injurious to learning. These colleges can therefore now purchase and hold as many advowsons as they please.

Of late years various places of learning have been incorporated under the name of Colleges by royal charter, such as University College and King's College, London. Both these colleges consist of a large number of shareholders or proprietors, in whom the property of the college is vested. Both these colleges are governed by a council; and King's College has also a principal, and in other respects is assimilated to the colleges at Oxford and Cambridge. University College has no principal or other corresponding officer: but it has a senate composed of the professors of the college, a pre-

sident and two vice-presidents; and faculties of arts and laws, and a faculty of medicine. The constitution of King's College assimilates it to the nature of a college at Cambridge or Oxford: that of University College assimilates it more to the character of the universities of Oxford and Cambridge, which are mere civil corporations. Neither University College nor King's College confers degrees; but the students of both colleges may take degrees in the University of London, subject to certain regulations. The College of Physicians in London, and the College of Surgeons, are also instances of civil corporations established under the name of colleges; and the Herald's College is another.

A Collegiate Church is a church that has a college or chapter of canons, but no bishop, and yet it is said to be under the authority of a bishop. But in the case of Manchester College, a mandamus from the Court of King's Bench was directed to the Bishop of Chester, as warden of Manchester College, to admit a chaplain. The bishop happened also to be visitor of the college. It was held by the King's Bench, that in the case of a spiritual corporation the jurisdiction was in that court, unless there was an express visitor appointed, and the court interposed in the present case, because there was no separate visitorial power then existing, owing to the union of the wardenship and visitorship in the same person. This case was afterwards provided for by an express act, 2 Geo. II. c. 29. The canonists require three canons at least to constitute a collegiate church, because three, according to the Roman law, were required to make a college. These collegiate churches are sometimes simply called colleges, and were formerly more numerous. Westminster, Windsor, Eton, Winchester, Southwell, and Manchester are collegiate churches. Probably schools were always a part of such foundations: those of Eton, Westminster, and Winchester have flourishing schools.

As to the relation between the English universities and the colleges within their limits, see UNIVERSITY.

The statutes of all the old colleges in England are in Latin; and, indeed, with the exception of some comparatively modern endowments, probably all college statutes are in Latin. Those of Eton College, of Trinity College, Cambridge, and of St. John's College, Cambridge, which may serve as specimens of the statutes of such foundations, are printed in the Education Reports of the House of Commons, 1818.

Meiners (*Geschichte der Enstehung und Entwickelung der Hohen Schulen*, &c., Göttingen, 1802, vol. i.) has given an interesting chapter on the origin of colleges in universities. The colleges in the University of Paris were the first institutions of the kind in Europe, though it is a mistake to suppose them older than the university itself.

The terms College and University have been often confounded in modern times, and indeed are now sometimes used indiscriminately. Some of the incorporated places of learning in the United States, which confer degrees, are called universities, and some are called colleges, though there is in fact no distinction between the two. Some of these institutions called colleges contain the schools or departments of arts, law, medicine, and theology; and some that are called universities contain only those of arts, law, and medicine. Some of these colleges are more limited as to the objects of instruction, but still they confer degrees. If we look to the origin of colleges and their connexion with universities, it will be evident that the indiscriminate use of these terms is incorrect, and tends to lead to confusion. When an incorporated college, such as the College of Surgeons in London, is empowered to confer a degree or title after examination of candidates, some other name would be more appropriate. According to modern usage, the term university is properly applied to corporate bodies which confer degrees; and this is the title by which the University of London, which is empowered to confer degrees in arts, law, and medicine, is incorporated. It is convenient at present to distinguish colleges as places of learning which do not confer degrees, from universities which do. The word Academia, though an old Greek word,

is the most modern of all the terms now applied to places of higher instruction: it has been most usually applied to endowed corporate bodies which have for their object the improvement of some particular science or some particular branch of knowledge, in some cases with the power to confer degrees in such particular science, &c., and sometimes without this power. Yet the terms academia and university have often been used, and now are used indiscriminately. (Meiners, vol. iv., *On the Different Names of High Schools.*)

The history of the Scotch universities shows that the terms college and university were, both at the time of the foundation of these institutions and subsequently also, used with little discrimination; and this carelessness in the application of the terms has led to anomalies in their constitution, and no little difficulty in comprehending the history and actual constitution of these bodies. (See the *Report of the Royal Commission of Inquiry into the State of the Scotch Universities*, printed 1831; and Malden's *Origin of Universities*, London, 1835.)

In France, the term college signifies a school, though the constitution of a French college is very different from that of our grammar-schools. It comes nearest, perhaps, to a German gymnasium. Of these colleges there are about 320, every large town having one of them. They are maintained by the towns, and the heads and professors are paid out of the revenues of the communes. They are all under the superintendence of the University of France. There are also about forty royal colleges, in which the directors (*administrateurs*) and professors are paid by the state. The College Royal of France, founded by Francis I., has above twenty professors, who lecture on the various sciences and the Oriental languages. (See *Journal of Education*, No. III. 'On the State of Education in France.')

COLLEGE. [COLLEGIUM.]

COLONEL, the commander of a regiment or battalion of troops; he is the highest in rank of those called field-officers, and is immediately subordinate to a general of division.

The derivation of the word is uncertain. It is supposed to have been given originally to the leader of a body of men appointed to found a colony; or to have come from the word *coronarius*, indicating the ceremony of investing an officer with the command of a corps; or, finally, from the word *columna*, denoting the strength or support of an army.

The title of colonel-general was, for the first time, conferred by Francis I., about the year 1545, on officers commanding considerable divisions of French troops, though, according to Brantome, it had been given to the chief of an Albanian corps in the service of France at an earlier period. When the troops of that country were formed into regiments (the infantry about 1565, and the cavalry seventy years afterwards), the chiefs of those corps were designated *Mestres de Camp;* and it was not till 1661, when Louis XIV. suppressed the office of colonel-general of infantry, that the commanders of regiments had the title of colonel.

In England, the constitution of the army was formed chiefly on the model of the French military force; and the terms regiment and colonel-general were introduced into this country during the reign of Elizabeth. It must, morever, be observed, that in the regulations made by the citizens of London for forming the militia in 1585, it is proposed to appoint *colonels* having authority over ten captains; and that both colonels and lieutenant-colonels are distinctly mentioned in the account of the army which was raised in order to oppose the threatened invasion of the country in 1588. Before the time of that queen, it appears that the commanders of bodies of troops equivalent to regiments had only the general title of captain.

The duties of colonels are described in Ward's 'Animadversions of Warre,' which was published in 1639; and from the account there given, it appears that those duties were then nearly the same as they are at present. To the colonel of a regiment, besides the general superintendence of the military duties performed by the troops composing it, is intrusted the care of providing the clothing

of the men and of appointing the agent through whom their pay is transmitted. Colonels take precedence of one another according to the dates of their commissions, and not according to the seniority of their regiments.

The lieutenant-colonel is immediately under the full colonel. He assists the latter in directing the evolutions of the battalion or regiment, which he also commands during the absence of his superior officers.

If appointed after 31st March, 1834, the annual pay of a colonel is, in the Life and Horse Guards, 1800*l.* without other emolument; but in all other regiments the colonel derives emoluments from clothing. The annual pay, exclusive of these emoluments, is—in the Grenadier Guards, 1200*l.*; in the Coldstream and Scots Fusilier Guards, 1000*l.*; in the cavalry regiments generally, 900*l.*; and in the regular infantry, 500*l.* The sum voted for the full pay of 135 colonels, in 1845, was 88,450*l.* The daily pay of a lieutenant-colonel is—in the Life Guards, 1*l.* 9*s.* 2*d.*; in the Foot Guards, 1*l.* 6*s.* 9*d.*; in the Royal Artillery, 1*l.* 7*s.* 1*d.* in the Horse Brigade, and 18*s.* 1*d.* in the Foot; in the Royal Engineers, 18*s.* 1*d.* and 16*s.* 1*d.*; and in the Royal Marines and in the Infantry, 17*s.* The full pay of 176 lieutenant-colonels was 59,180*l.* in 1845. The half-pay of a colonel of cavalry is 15*s.* 6*d.*, and of infantry 14*s.* 6*d.* per diem. A lieutenant-colonel of cavalry receives 12*s.* 6*d.*, and of infantry, 11*s.*; and in the Artillery and Engineers, 11*s.* 8*d.* For prices of commissions see COMMISSION.

In February, 1845, there were in the British army 374 colonels and 697 lieutenant-colonels.

COLONIAL AGENTS. Most of the British colonies have agents in England, whose duties do not appear to be very accurately defined. The act of 1843, appointing an agent for Jamaica, recites, "that it is necessary the inhabitants of this island should have a person in Great Britain fitly qualified and fully empowered to solicit the passing of laws and to transact other public matters committed to his care for the good of the island." In this case the salary of the agent is 1000*l.* per annum. A person called "the agent-general" acts for the crown colonies; but where there is a local legislature the appointment is generally made by it. Previously to the separation of the North American colonies most of them had a special agent in England for the management of their affairs, to whom a salary was given. They were appointed by the Assemblies, and sometimes confirmed by the governor. Sometimes, as in Massachusetts, the legislative council and the Assembly had each its own agent. The persons generally selected were distinguished lawyers or merchants, usually the former, and often members of parliament. William Knox, under-secretary of state, was agent for Georgia in 1764; John Sharpe, M.P., was agent for Massachusetts in 1755; Charles Garth, M.P., acted for South Carolina from 1765 to 1775, and his correspondence during this period contains a full account of the proceedings of the Imperial Parliament. Richard Jackson, M.P., acted for Connecticut, Massachusetts, and Pennsylvania, about the year 1774. Edmund Burke was appointed agent, by the House of Assembly alone, for New York, December 21, 1770, with a salary of 500*l.* a year, and continued to act until 1775, when all intercourse with the colony was suspended. The House of Assembly of Lower Canada several times appointed special agents, the last of whom was Mr. Roebuck, M.P., who in that capacity, but not at the time an M.P., was heard at the bar of both Houses of Parliament in opposition to the Bill to suspend the constitution of Lower Canada. (Pamphlet *On the Nomination of Agents formerly appointed to act in England for the Colonies of North America*, 1844.)

CO'LONY (in Latin Colonia, a word derived from the Latin verb 'colo,' 'colere,' to till or cultivate the ground) originally signified a number of people transferred from one country or place to another, where lands were allotted to them. The people themselves were called Coloni, a word corresponding to our term colonists. The meaning of the word was extended to signify the country or place where colonists settled, and is now generally applied to any settlement

or land possessed by a sovereign state upon foreign soil. Thus Ceylon and the Mauritius are called British colonies, though they are not solely colonized by Englishmen, the former being chiefly inhabited by natives, and the second by French or descendants of French colonists and Africans. The present notion of the word "colony" (as determined by the general use of the term) seems to be a foreign country, either wholly or partly colonized, that is to say, possessed and cultivated by natives, or the descendants of natives, of another country, and standing in some sort of political connection with and subordination to the mother country. The notion of a British colony implies that the waste lands belong to the British crown. The continental possessions called British India are not a colony: the island of Ceylon is a colony.

The formation of colonies is among the oldest events recorded in history or handed down by tradition. Maritime states, such as those of Phœnicia and of Greece, which possessed only a scanty territory, would have recourse to emigration as their population increased. In both these countries the sea afforded a facility for transferring a part of their superabundant citizens, with their families and movables, and their arms, to some foreign coast, either uninhabited or thinly peopled by less civilized natives, who, by good will or by force, gave up to them a portion of their land. The emigration might be voluntary or forced; it was sometimes the result of civil contentions or foreign conquest, by which the losing party were either driven away, or preferred seeking a new country to remaining at home. The report of some remote fertile coast abounding in valuable productions would lead others to emigrate. Lastly, the state itself having discovered, by means of its merchants and mariners, some country to which they could trade with advantage, might determine upon sending out a party of settlers, and might establish a factory there for the purpose of sale or exchange. In fact, commercial enterprise seems to have led both to maritime discovery and to colonization as much as any one single cause. Such seem to have been the causes of the numerous Phœnician colonies which, at a very early date, were planted along the coasts of the Mediterrannean. Tyre itself was a colony of Sidon, according to the 'Old Testament,' which calls it the "daughter of Sidon." Leptis Magna, near the great Syrtis, was also a colony of Sidon, according to Sallust (*Jugurth.* c. 78). Hippo, Hadrumetum, Utica, and Tunes, were Phœnician colonies, and all of greater antiquity than Carthage, which was subsequently settled by Phœnicians in the neighbourhood of Tunes. The Phœnician colonies extended along the north coast of Africa as far as the Pillars of Hercules (the Straits), and along the opposite coast of Spain, as well as to the Balearic Islands, and Sardinia and Sicily. Those on the Spanish coast seem to have been at first small settlements or factories for the purpose of trade between the metropolis or mother country and the natives. Several of them, however, such as Gades (the site of the modern Cadiz), became independent of the mother country. The foundation of Carthage was an instance of another kind. It resulted, according to tradition, from an emigration occasioned by the tyranny of a king of Tyre.

Of the early settlements in the islands of the Ægean Sea we have only traditions referring to times previous to the war of Troy. Thucydides (i. 4) says that the Carians inhabited the Cyclades islands, and carried on piracy, until Minos, king of Crete, drove them away and planted new colonies. Thucydides does not mention the Phœnicians as occupying the Cyclades, but he speaks of the islands of the Ægean generally as possessed by Carians and Phœnicians, who carried on piracy; and he adds that they settled on most of the islands (i. 8). Herodotus (ii. 44; vi. 47) also states that the Phœnicians had once a settlement in the island of Thasus, where they worked the gold-mines. They also had a settlement on the island of Cythera (Cerigo), which lay conveniently for their trade with the Peloponnesus. (Herodotus, i. 105.) Thucydides (vi. 2) mentions that the Phœnicians formed establishments on the promontories and small islands on the coast of

Sicily, from which they traded with the native Siculi; but that when the Greeks came to settle in great numbers in that island, the Phœnicians abandoned several of their posts, and concentrated themselves at Motya, Soloeis, and Panormus, now Palermo (which must have then had another name, for Panormus, or Allport, is Greek), near the district occupied by the Elymi or Phrygian colonists (who had emigrated from Asia after the fall of Troy, and had built Entella and Egesta), trusting to the friendship of the Elymi, and also to the proximity of these ports to Carthage. These three Phœnician settlements merged afterwards into Carthaginian dependencies. The Phœnicians appear also to have occupied Melita or Malta, and the Lipari Islands, one of which retained the name of Phœnicusa. Of the Carthaginian settlements in Sardinia we have the report of Diodorus (v. 13) and a fragment of Cicero *Pro Scauro*, published by Mai. (Compare Pausanias, x. 17; Strabo, p. 225, ed. Casaub.) Caralis (Cagliari) and Sulchi were Carthaginian settlements. A Phœnician inscription was found in a vineyard at Cape Pula, belonging to the monks of the order of Mercy, and was explained by De Rossi, 'Effemeridi Letterarie di Roma,' 1774. But the chief field of Phœnician colonization was the north coast of Africa. There the Phœnician settlements seem to have been independent, both of the mother country and of each other. We have the instance of Utica and Tunes, which continued separate communities even after Carthage had attained great power, Carthage only exercising the hegemony, or supremacy. This seems to have been the case among the original Phœnician towns; Sidon, Tyre, Aradus, and others, each a distinct commonwealth, formed a sort of federation, at the head of which was the principal city, at first Sidon, and afterwards Tyre. A feeling of mutual regard seems to have prevailed to the last among the various Phœnician towns and colonies, including Carthage, as members of one common family.

The colonies established afterwards by the Carthaginians in the interior as well as on the coast of Africa, Sicily, and Spain, were upon a different plan from those of the Phœnicians: they were made through conquest, and for the purpose of keeping the country in subjection, like those of the Romans, with the remarkable exception of the colonies planted by Hanno on the west coast of Africa.

The earlier Greek colonies appear to have owed their origin to the same causes as those of the Phœnicians. Thucydides (i. 12) says, that after the Trojan war, and the subsequent conquest of Peloponnesus by the Dorians, Greece, being restored to tranquillity, began to send out colonies. The Athenians, whose country was overflowing with people from other parts of Greece, who had flocked thither for security, began to send out Ionians, as Thucydides terms the settlers in the country in Asia called after them Ionia, and to many of the islands: the Peloponnesians sent theirs to Italy, Sicily, and some parts of Greece. The Dorians from Megaris, Argos, Corinth, and other places, colonized some of the larger islands, part of Creta, Rhodes, Corcyra, as well as Ægina, Cos, and other islands. They founded the Hexapolis on the south-west coast of Caria, in Asia Minor, which district took from them the name of Doris. A colony of Lacedæmonians founded Cyrene. The Megarians founded Chalcedon, Byzantium, Selymbria, Heraclea, and other places on the coasts of the Euxine. Sicily also was chiefly colonized by Dorians. Syracuse was a Corinthian colony, which afterwards founded Acræ and Camarina: Gela was a colony of Rhodians and Cretans, and Agrigentum was a colony from Gela. The Megarians founded Selinus. The Chalcidians built Naxus, which was the first Greek settlement in Sicily, and afterwards took Leontini and Catana from the Siculi. For a more detailed account of the numerous Dorian colonies, see K. O. Müller's 'History of the Doric Race.'

The Ionians from Attica, who emigrated to the west coast of Asia Minor, which took from them its name Ionia, established there twelve cities or communities, which quickly rose to a high degree of prosperity, and formed a kind of federal union. These Ionians who settled in Asia were a mingled people, of whom the Ionians who emigrated from Athens

considered themselves the best part. They gave the name Ionia to their new settlements in Asia from the country in the Peloponnesus, once called Ionia, and subsequently Achæa, from which they had been driven by Achæans who settled there. As the Ionians consisted of twelve states in their old country, so they made twelve states in their new settlements. (Herodotus, i. 143, &c.) Four generations before the Ionian emigration, according to Strabo (p. 582, ed. Cas.), the Æolians and some Achæans, two nearly allied races, being driven away from part of the Peloponnesus by the Dorians, had emigrated to the coast of Asia Minor, where they formed colonies from Cyzicus on the Propontis as far southwards as the Hermus. Phocæa was the most northern of the Ionian towns, and it was on the borders of Æolis. The Æolians also colonized the islands of Lesbos, Tenedos, and others in that part of the Ægean. These emigrations were posterior to the time of Homer, who mentions other people as occupying that coast. The Athenians at a later date colonized Eubœa, where they founded Chalcis and Eretria; and they also sent colonies to Naxos, to the islands of Ceos, Siphnos, Seriphos, and other islands of the Ægean. Many of these colonies, having thriven and increased, became colonizers in their turn. The enterprising mariners of Phocæa formed various colonies, the most celebrated of which is Massilia (Marseille), on the south coast of Gaul. Miletus, also one of the Ionian cities, was the parent of numerous colonies, many of which were on the south coast of the Black Sea. The Chalcidians of Eubœa founded Cumæ, on the west coast of Italy, in the country of the Opici. Pirates from Cumæ founded Zancle in Sicily, on the Straits of Messina; but a fresh colony of Samians and some Milesians escaping from the Persian invasion, in the time of the first Darius, B.C. 494, took Zancle, and were afterwards in their turn dispossessed by Anaxilas, tyrant of Rhegium, who called the town Messene (now Messina), from the name of his original country in the Peloponnesus. The Æolians founded Dicæarchia, afterwards Puteoli, in Italy, and they, with the Cumæans, are supposed to have founded Parthenope (Naples).

The Greek colonies on the east coast of Italy, setting aside the confused traditions of Arcadian and other immigrations, consisted chiefly of Dorians and Achæans from the Peloponnesus. Croton, Sybaris, and Pandosia were Achæan colonies. Tarentum was a colony of Lacedæmonians, and Locri Epizephyrii of the Locrians. Greek colonies were settled both on the north and east sides of the Pontus (Black Sea), and also on the north coast and in the modern Crimea. Many of them, as already observed, were Milesian colonies.

The relation which subsisted between the Greek colonists and the prior inhabitants of the countries which they occupied, was undoubtedly in most cases that of conquerors and subjects. Either the natives withdrew into the interior and left the ground to the new occupants, as the Siculi did in several instances, or they resisted, in which case, when overpowered, the men were exterminated or reduced to slavery, and the conquerors kept the women for themselves. In some instances the older inhabitants were reduced to the condition of serfs or bondmen to the new settlers. The records of authentic history do not present us with an instance of any colony being settled in a country where there were not previous inhabitants. The consequence of the immigration of a new race, who seek to possess themselves of the land, must be the extermination or gradual decay of the prior race, unless the old inhabitants are made slaves. So far as we trace the history of Greek colonies in the scattered fragments of antiquity, such were the consequences of their colonial settlements. On the coast of Italy it would appear that the Greeks pursued a more humane or more politic course. They are said to have allied themselves to and intermarried with the natives, and by their superior civilization to have acquired great influence. It may here be remarked that the Greeks, so far from being averse to foreign intermixture, as some have said, mingled their blood freely with that of all the nations with whom they came into contact, and thus the civilization of the

Hellenic stock was gradually introduced among nations less advanced in the useful arts.

The relations between these Greek colonies and the mother country, and between those colonies that were of a kindred race, may be gathered pretty clearly from Thucydides (i. 24, &c.). Epidamnus was a colony of Corcyra: but the leader of the colony (οἰκιστής), the founder of the colony, or the person under whose conduct it was settled, was a Corinthian, who was called or invited, says Thucydides, from the mother city (called by the Greeks the metropolis, μητρόπολις, or parent state), according to an ancient usage. Thus it appears that if a colony wished to send out a new colony, this was properly done with the sanction of the mother country. Some Corinthians and other Dorians joined in the settlement of Epidamnus, which became a thriving community, and independent both of Corcyra and Corinth. In the course of time, however, civil dissensions and attacks from the neighbouring barbarians induced the Epidamnians to apply to Corcyra, as to their metropolis, for assistance, but their prayers were not attended to. Being hard pressed by the enemy, they turned themselves to the Corinthians, and gave up their town to them, as being the real founders of the colony, in order to save themselves from destruction. The Corinthians accepted the surrender, and sent a fresh colony to Epidamnus, giving notice that all the new settlers should be on an equal footing with the old settlers: those who did not choose to leave home were allowed to have an equal interest in the colony with those who went out, by paying down a sum of money, which appears to have been the price of allotments of land. Those who went out gave their services; those who stayed at home gave their money. "Those who went out," says Thucydides, "were many, and those who paid down their money were also many." For the moneyed people it was in fact an affair of pure speculation. The Corcyræans, themselves originally a colony from Corinth, having become very powerful by sea, slighted their metropolis, and "did not pay to the Corinthians the customary honours and deference in the public solemnities and sacrifices, as the other colonies were wont to pay to the mother country." They accordingly took offence at the Corinthians accepting the surrender of Epidamnus, and the result was a war between Corcyra and Corinth.

Again, the Corcyræan deputies, who were sent to seek the alliance of the Athenians against Corinth, stated in answer to the objection that they were a colony of Corinth, that "a colony ought to respect the mother country as long as the latter deals justly and kindly by it, but if the colony be injured and wrongly used by the mother country, then the tie is broken, and they become alienated from each other, because, said the Corcyræans, colonists are not sent out as subjects, but as free men to have equal rights with those who remain at home." (i. 34.) This shows the kind of relation as understood by the Greeks between the metropolis and its colonies. The colonies were in fact sovereign states, attached to the mother country by ties of sympathy and common descent, so long as those feelings were fostered by mutual good-will, but no further. The Athenians, it is true, in the height of their power, exacted money from their own colonies as well as from the colonies of other people, and punished severely those who swerved from their alliance, such as Naxos; but this was not in consequence of any original dominion as supposed to belong to the mother country over the colony. Many of the colonies, especially the earlier ones, which were the consequence of civil war or foreign invasion, were formed by large parties of men under some bold leader, without any formal consent being asked from the rest of the community: they took their families, their arms, and their moveables with them, to conquer a new country for themselves; they left their native soil for ever, and carried with them no political obligations. Those that went off in more peaceful times, by a common understanding of the whole commonwealth, went also away for ever, and freely and voluntarily, though under a leader appointed by the parent state, to seek a country where they could find an easier subsistence than at home. In

either case it was a complete separation of a member from the body. Such were the proper colonists (ἀποικίαι) of the Greeks; but they were not colonies in the modern sense of the word, nor colonies in the Roman sense. We have derived from the Romans the name of colony, and our colonies resemble theirs in a great degree, and bear no resemblance to the so-called Greek colonies. Indeed, the Greek colonies should be called by another name; and the word "foreign settlements," or the German term "auswanderung," comes nearer to the sense of Apoikia (ἀποικία) than the term colony. When the Athenians, in later times, took possession of parts of Eubœa (Thucyd. i. 114), and of Ægina (ii. 27), of Melos (v. 116), and shared the lands among their own citizens who went there, the relationship thus formed was of a different kind, and came nearer to the nature of a Roman and a modern colony. Yet Thucydides calls the settlers in Melos, Apoikoi (ἄποικοι); but the name Cleruchi was usually given to such settlers: and their allotments were called Cleruchiae (κληρουχίαι). In the case of Ægina the whole population, which was of Hellenic stock, was turned out, and a body of Athenians occupied their place, with the express object of being as a body or community subordinate to the state of Attica, in order to prevent the annoyance to which Attica had long been subject by the proximity of an independent island so well situated both for the purpose of annoying Attica and for self-defence. The relation between the settlers called Cleruchi and the parent state of Athens appears not to have been always the same; that, in some cases at least, they retained all the privileges of Athenian citizens is sufficiently clear. Of these Athenian settlements the earliest is the instance mentioned by Herodotus (v. 77), which belongs to the last part of the sixth century B.C., of the settlement of four thousand Athenians in Chalcis on the conquered lands. The system subsequently was extended to other places, as appears from the passages above referred to; and, among other places, the island of Lesbos received Athenian settlers. (Thucydides, iii. 50.) The battle of Ægospotami (B.C. 401) deprived the Athenians of their foreign dependencies, though they were partially recovered. But Athens never succeeded in establishing a system of colonies on a sure and lasting basis, as the Romans did.

That the Greek settlements of a kindred race should feel a common interest in opposition to those of a rival branch is natural, and is proved, among other instances, by the case of the deputies from Egesta in Sicily, who, while requesting the assistance of the Athenians against the Syracusans and Selinuntians, urged as an additional plea that the Leontines, who were originally Chalcidians, and therefore akin to the Athenians, had been expelled from their town by the Syracusans, and showed that it was the interest of the Athenians to assist a kindred people against the prevailing power of the Dorian colonies in Sicily. (Thucyd. vi.)

Before we pass to the Roman colonies, we must say something of the system of colonization among the other inhabitants of the Italian peninsula in the ante-Roman times. The Etruscans extended their conquests north of the Apennines in the great plain of the Po, and founded there twelve colonies, the principal of which was Felsina (Bologna). Afterwards, having defeated the Umbrians, many years before the assumed foundation of Rome, they extended themselves into East and South Italy, penetrated into Latium, and took Campania from the Oscans, where they founded likewise twelve colonies, the principal of which was Capua. The Etruscans, being skilled in architecture, surrounded their towns with solid walls built of massive stones without any cement; they were also well versed in agriculture and hydraulics, and several of the earliest drains and canals in the Delta of the Po are attributed to them. They subjected, but at the same time civilized, the people among whom they settled. Their colonies seem to have formed independent communities, though allied by a kind of federation. The Etruscans also founded colonies in the Picenum, such as Hatria, Cupra Montana, and Cupra Maritima. They took from the Ligures the country around the gulf now

called Della Spezia, and founded the city of Luna. They likewise sent colonies to the islands of Elba and Corsica, for the Etruscans were a commercial as well as agricultural people; they navigated the sea, and in the sixth century B.C. they defeated the Phocæans, and drove them out of Corsica. The Etruscans contributed to civilize Italy by means of their settlements; but, unlike Rome, they did not keep them united under a central power.

The Sabini, an agricultural and pastoral people, lived in the Apennines of Central Italy, and occupied part of the modern Abruzzi: they sent out colonies in very early times to other parts of Italy. It was a custom common among many of the old Italians, after the lapse of a certain number of years, to celebrate solemn sacrifices in the spring season, and to consecrate to the gods a number of young men, who were to quit their native land, and proceed under the auspices of Heaven to seek a new country. (Dionysius, *Roman Antiquities*, i. 16.) In this manner the Piceni and the Samnites are said to have been colonies of the Sabini. The Samnites in their turn sent out other colonies, and the Lucanians were one of these. The Samnites, as well as the Sabini, were entirely given to agricultural pursuits.

Rome, in the earliest ages, adopted the system of sending out colonies to those parts of Italy which she conquered. Colonies were established during the kingly period (Livy, i. 11, 27, 56); and the practice was continued after the expulsion of Tarquinius Superbus, the last king (Livy, ii. 21, 39). But the Roman colonies were different from those of most other people, inasmuch as they remained strictly subject to the mother country, whose authority they were the means of enforcing upon the conquered nations. They were, in fact, like so many garrisons or outposts of Rome. Servius (Æn. i. 16) gives the following definitions of a colony, taken from much older authorities:—"A colony is a society of men led in one body to a fixed place, furnished with dwellings given to them under certain conditions and regulations." Again, "Colonia is so called a colendo; it consists of a portion of citizens or confederates sent out to form a community elsewhere by a decree of their state, or with the general consent of the people from whom they have departed. Those who leave without such a consent, but in consequence of civil dissensions, are not colonies." The notion of an early Roman colony was this: the colonists occupied a city already existing; and this, with perhaps one exception or two, was the general character of the early Roman colonies in Italy. These colonists were a part of the Roman state; they secured her conquests and maintained the subject people in obedience. When the Romans afterwards extended their conquests into countries where there were no regular towns, or where the population was fierce and hostile, and the Roman settlers must be ever on their guard against them, they built new towns in some favourable position. Such was the case in several parts of Gaul, Germany, and Spain. The first Roman colony beyond the limits of Italy was that founded on the site of Carthage, in the tribunate of Caius Gracchus, B.C. 122. This colony, which was originally called Junonia, did not succeed, or was neglected, owing to the dissensions at Rome: it was restored, or finally established, by C. Julius Cæsar. (Plutarch, *Caius Gracchus*, c. 11.) Narbo Martius, Narbonne in the south of France, was one of the early colonies beyond the limits of Italy. The early Roman colonies then in Italy consisted of Roman citizens, who were sent as settlers to fortified towns taken in war, with land assigned to them at the rate generally of two jugera of arable land or plantation for each man, besides the right of pasture on the public or common land. The old inhabitants were not ejected, or dispossessed of all their property; the general rule was, that one-third of the territory of the town was confiscated and distributed among the colonists, and the rest was left to the former owners, probably subject to some charges in the shape of taxes or services. The colonists constituted the *populus* of the captured place; they alone enjoyed political rights and managed all public affairs. The ownership of the publicum or public property, including the pasture land, was probably also vested in the new

settlers. It is natural to suppose, that for some generations at least, no great sympathy existed betweeu the old and the new inhabitants, and hence we frequently hear of revolts of the colonies, which means, not of the colonists against the mother city, but of the old inhabitants, who rose upon and expelled the colonists. (Livy, ii. 39; vi. 21.) But these events generally ended by a second conquest of the place by Roman troops, when the old inhabitants were either put to the sword or sold as slaves, or, under more favourable circumstances, lost at least another third of their property. In later times, during the Civil Wars of Rome, which commenced with the disputes between Marius and Sulla, new colonies were sent by the prevailing party to occupy the place of the former ones; and the older colonists were then dispossessed of their property either wholly or in part, just as they had dispossessed the original inhabitants. Sometimes colonies, especially at a great distance from Rome, having dwindled away, or being in danger from the neighbouring people, asked for a reinforcement, when a fresh colony was sent, which also received grants of land. (Livy, ii. 21; vi. 30; xxxi. 49.) Each of the older colonies, it is observed by Gellius (xvi. 13), was a Rome in miniature; it had its senators called Decuriones, its Duumviri, Ædiles, Censores, Sacerdotes, Augurs, and other officers.

A distinction must be made between Roman colonies and Latin colonies. The citizens who went out to form a Roman colony retained all their civic rights, although Sigonius and some others pretend that they lost the franchise (jus suffragii); and yet, in various passages of Livy and elsewhere, colonists are styled cives and Romæ censi. The members of Roman colonies which were called Latin (Coloniæ Latinæ), had not the Roman citizenship, and those Roman citizens who went out in such a colony thereby lost their suffrage; they voluntarily renounced part of their civic rights in consideration of a grant of lands. The practice was for those persons who were willing to join a colony, to give in their names at Rome, and as the consequence of joining a Latin colony was a loss of civic rights, Cicero (*Pro Cæcina*, c. 33) argues that the joining such colony must be a voluntary act. There is also no reason for supposing that the joining of a Roman colony was compulsory; and if it was, it follows from what has been said, that a Roman colonist retained his civic rights. These Latin colonies were Roman colonies, inasmuch as they were subject to the Roman state; and hence they are sometimes called Roman colonies, which in one sense they were. But as opposed to Roman colonies which consisted of Roman citizens (Coloniæ civium), they were called Latin colonies, by which term was denoted their political condition. Before the Social War (B.C. 90), the following was the classification of people in the Roman dominions:—

1. Cives Romani, Roman citizens, that is, the inhabitants of Rome, the citizens of the Coloniæ Civium or proper Roman colonies, and the citizens of the Municipia without reference to the stock to which they belonged.

2. Latini, or the citizens of the old towns of the Latin nation, with the exception of those towns which were raised to the rank of Municipia; and also the numerous and important Coloniæ Latinæ.

3. Socii (Allies), the free inhabitants of Italy who did not belong to the two classes first enumerated, and belonged to very various national stocks.

4. Provincials: the free subjects of the Romans beyond the limits of Italy.

This is the division of Savigny (*Zeitschrift für Geschichtliche Rechtswissenschaft*, xi. 6); and it appears to be consistent with all the best ancient authorities. He adds that as to the political condition of the people included under these four heads, those included under the first head, Cives Romani, were alone Cives; those included under the three other heads were Peregrini (aliens). According to this view, the members of Latin colonies before the Social War were simply subjects of the Roman state: they had none of those political capacities which were the characteristics of Roman citizenship. As the term Peregrinus, however, was very comprehensive, and included all who were not Cives, it follows that, according to this view, the Latinæ Coloniæ and

foreigners not under Roman dominion were precisely on the same footing as to the privileges of Roman citizens; but their condition differed in this, that foreigners (aliens, properly so called) were not Roman subjects, but the members of Latin colonies were. This view is perhaps on the whole right, yet the inhabitants of Latin colonies were in a sense Cives, as contrasted with foreigners not subject to Rome, though they were not Roman citizens, in the sense of those who had all the capacities of Roman citizenship.

The result of the Social War was, that the Roman citizenship (civitas) was given to all the inhabitants of Italy south of the Po: all became Romani Cives; and the Latini—the inhabitants of Coloniæ Latinæ—and the Socii were all merged in the class of Cives. The distinction of Romani Cives and Peregrini still subsisted; but the class of Roman citizens had become enlarged. A new class of persons was now established, and distinguished by the name of Latini. This term now did not denote a particular people, but a political status—an imperfect citizenship, by virtue of which this new class had the right of acquiring property (commercium) just like Roman citizens; but they had not the connubium, or civic right of contracting such a marriage as would be a Roman marriage; in other words, a Roman citizen who married a woman in the condition of a Latina, was not according to Roman law the father of his children, and the children consequently were not Roman citizens. But in certain cases, a Latinus might acquire the Roman citizenship, for instance, by holding the high offices in his city. This rule was first established for the people north of the Po, and then given to many towns, and to large tracts out of Italy. The privilege of thus acquiring the Roman citizenship was the Jus Latii (Appian, *Civil Wars*, ii. 26), or Latinitas (Cicero, *Ad Atticum*, xiv. 12); and it was given to some towns founded after the Social War, as Novum-Comum, which was founded in Italy north of the Po, by C. Julius Cæsar, B.C. 59. The privilege which the Romans sometimes conferred on a town or district, under the name of Jus Italicum, was a different thing from the Jus Latii. "It had no reference to the status of individuals, but to the condition of many communities. When a Provincial town received as a special favour by a Privilegium those rights which were the peculiar privileges of the Italian towns, this favour was called Jus Italicum. It consisted of three things: a free constitution, with the choice of their own magistrates, such as are mentioned in the Italian Municipia and Colonies (Duumviri, Quatuorviri); exemption from land-tax and poll-tax; the capacity of the land within the limits of the community to be held in Roman ownership (ex jure Quiritium), and the consequent application to such land of the Roman rules of law, as to Mancipation and Usucapion." (Savigny, *Zeitschrift*, &c., xi.)

The correctness of this view of the nature of the Coloniæ Latinæ, the Latinitas, and the Jus Italicum, will hardly be disputed now.

The Roman Agrarian Laws, or the laws for the distribution of public land, were often passed with the view of founding a colony: and this became a usual mode of providing for veteran soldiers. Perhaps one of the earliest instances is mentioned by Livy (xxxi. 4). The senate passed a decree for the measurement and distribution of public land in Samnium and Apulia among those veteran soldiers who had served in Africa under P. Scipio. But after Sulla had defeated his opponents, the grants of lands to soldiers became more common, and they were made to gratify the demands of the army, at the cost of former settlers, who were ejected to make way for the soldiers. Julius Cæsar and Octavianus Augustus added to the number of these military colonies, and the practice of establishing them in parts beyond Italy existed under the Empire.

These colonies are distinguished by having military ensigns on their coins, while the Coloniæ Togatæ, or citizen colonies, have a plough on theirs. The coins of some colonies have both marks, which means that the original colony consisted of citizens, after which a second was sent, composed of soldiers. In Tacitus (*Annal.* i. 17), the veterans complain

that, after their long service, they were rewarded only with lands situated in swampy tracts or on barren mountains.

The early system of colonies adopted by Rome had a double political object; to secure the conquered parts of Italy, and to satisfy the claims of its own poorer citizens by a division of lands among them. The importance of the Roman colonies is well expressed by Cicero, who calls them "propugnacula imperii et speculæ populi Romani." Such they doubtless were, and at the same time, by their extension beyond Italy, they were the germ of the civilization of Northern and Western Europe. A nation of civilized conquerors, whatever evils it may inflict, confers on the conquered people greater benefits. By their colonies in Spain, Gaul, on the banks of the Rhine, and in Britain, the Romans established their language and their system of administration. The imprint of their Empire is indelibly fixed on all the most civilized nations of Europe.

The difference between a Roman Colonia and an Italian Municipium is, that the latter was a town of which the inhabitants, being friendly to Rome, were left in undisturbed possession of their property and their local laws and political rights, and obtained moreover the Roman citizenship, either with or without the right of suffrage; for there were several descriptions of Municipia. The Roman colonies, on the contrary, were governed according to the Roman law. The Municipia were foreign limbs engrafted on the Roman stock, while the colonies were branches of that stock transported to a foreign soil. There is, however, some difficulty as to the precise character of an Italian Municipium in the republican period of Rome; and the opinions of modern writers are not quite agreed.

The Roman Provincial system must not be confounded with their Colonial system. A Roman province, in the later sense of that term, meant a country which was subjected to the dominion of Rome, and governed by a praetor, propraetor, or proconsul sent from Rome, who generally held office for a year, but sometimes for a longer period. Thus Spain, after the Roman conquest, was a Roman province, and was divided into several administrative divisions. The earliest foreign possession that the Romans formed into a province was Sicily (B.C. 241). Sardinia (B.C. 235) became a Roman province, and the system was extended with the extension of the Roman power to all those parts of Europe, Asia, and Africa which were subjected to Roman dominion. A province was originally a foreign dependency on Rome; after all Italy became Roman, at the close of the Republican period, we may view all the provinces of Rome as foreign dependencies on Italy, of which Rome was the capital. The condition of the provinces, viewed as a whole, with respect to Rome was uniform: they were subject countries, subject to the ruling country, Italy. But the condition of the towns in the provinces varied very greatly: some had the Jus Italicum, or privilege of Italian towns, in the sense already explained, and these were probably in most cases settlements of Roman citizens; some towns retained most or perhaps all of their old privileges; and others were more directly under the Roman governor. Thus while the whole country was a dependency on Rome, particular cities might have all the privileges of Italian cities; and others would be in a less favoured condition. Both under the Republic and the Empire, but still more under the Empire, the Romans established colonies both of Roman citizens and Latin colonies, in their provinces; and in this way they introduced their language and their law. Tracts of land were doubtless seized as public land and distributed from time to time, but there does not appear to have been any claim on all the lands in any province, as lands that the Roman state might distribute, though undoubtedly the theory under the Empire was that all land in the provinces belonged to the Cæsar or the Roman state (Gaius, ii. 7). And this theory would have a practical effect in all cases where an owner of land died and left no next of kin, or anybody who could claim his land. The maxim also implied the duty of obedience to the Roman state, and that rebellion or resistance to the Romans would at once be a forfeiture of that land which was held by provincials, according to this theory, as a

precarious possession. But the Romans never gave the name of Colony to any of their Provinces. There were Roman colonies in Britain, but Britain itself was not a Colony; it was a Province. In modern usage, whenever the word colony is applied to a country, it includes all the territory of such country.

The Northern tribes who overthrew the Western Empire did not found colonies; they overran or conquered whole provinces, and established new states and kingdoms. The same may be said of the Saracen conquests in Asia and Africa. But, after a lapse of several centuries, when Europe had resumed a more settled form, the system of colonization was revived by three maritime Italian republics, Pisa, Genoa, and Venice. Their first settlements on the coasts of the Levant and Egypt were mercantile factories; which the insecurity of the country soon induced them to convert into forts with garrisons, in short into real colonies. The Genoese established colonies at Famagosta in Cyprus, at Pera and Galata, opposite to Constantinople, and at Caffa in the Crimea, in 1266; they also acquired possession of a considerable extent of coast in that peninsula, which was formed into a district subject to Genoa under the name of Gazaria. Another tract, on the coast of Little Tartary, called Gozia, was also subject to the Genoese, who had there the colony of Cembalo. In the Palus Mæotis they had the colony of La Tana, now Azof. On the south coast of the Euxine they possessed Amastri; they had also a factory with franchises and their own magistrates at Trebizond, as well as at Sebastopolis. These colonies were governed by consuls sent from Genoa, and the order and justice of their administration have been much extolled. In the archives of St. George, at Genoa, there is a valuable unpublished MS. containing the whole colonial legislation of the Genoese in the middle ages.

The Pisans, having taken Sardinia from he Moors, sent colonies to Cagliari and other places. Their settlements in the Levant were mere commercial factories.

The Venetians established colonies in what are now called the Ionian Islands, and in Candia and Cyprus. Their system resembled that of Rome; by means of their colonies and garrisons they governed the people of those islands, whom they left in possession of their municipal laws and franchises. These were not like the settlements of the Genoese, merely commercial establishments — they were for conquest and dominion; in fact, Candia and Cyprus were styled kingdoms subject to the Republic. The Venetians had also at one time factories and garrisons on various points of the coasts of the Levant, but they lost them in the Morea, Eubœa, Syria, and the Euxine, either through the Genoese, or afterwards by the arms of the Ottomans. We can hardly number among their colonies the few strongholds which they had until lately on the coast of Albania, such as Butrinto, Prevesa, and Parga, any more than those once possessed by the Spaniards and Portuguese on the coast of Barbary, Oran, Melilla, Ceuta, and others. They were merely forts with small garrisons, with no land attached to them. The name used in the Mediterranean for such places is presidii; and they are often used as prisons for criminals.

An essential qualification of a Colony in the Roman sense, and in the present sense of the word is, that it should have land, and contain a body of settlers who are cultivators. The question agitated in France, with regard to Algiers, turned upon this,—whether the French were merely to occupy the towns on the coast as military and in some degree commercial colonies, or to establish an agricultural colony in the interior, by taking possession of and cultivating the land. This question touches several points both of justice and policy. When a colony is sent to a country occupied by a few hunting tribes, as was the case in North America when the English settled there, and as is now the case in New Holland, the taking possession of part of the land for the purpose of cultivation is attended with the least possible injury to the aborigines, while, at the same, it has in its favour the extension of civilization. [CIVILIZATION.] The savages generally recede before civilized man; a few of them adopt his habits, or at least the worst part of his habits, and the rest become gradually ex-

tinct. When the limits are confined, the progress towards extinction is exceedingly rapid. The aborigines of Van Diemen's Land having been reduced to a very small number, were wholly removed to a small island in Bass's Straits; and there is every probability that their race will soon be extinct. This has been, from the earliest times, the great law of the progress of the human race. But the case is much altered when the natives are partly civilized, have settled habitations, and either cultivate the land or feed their flocks upon it. The colonists in such case do what the Romans did in their colonies; they take part of the arable land, or the whole of the common or pasture land, and leave to the natives just what they please, and if the natives resist they kill them. Such was the system pursued by the Spaniards in various parts of America, by the Dutch at the Cape of Good Hope and the Molucca Islands, and by all maritime nations in some part or other of Asia, Africa, or America; and this is now done by the French against the Arabs and Kabyles of the state of Algiers. The French have sent numerous colonists to Algiers, and among the colonists are many old soldiers who have received a grant of lands after the Roman fashion. The case may be one of greater or less oppression: according as the land is either enclosed and cultivated, or merely used for pasture or the chace; and according as the natives are more or less numerous in proportion to the land, colonization may proceed on a milder or harsher system. The system of purchase from the natives has been practised both by the English and Anglo-Americans in North America; but though it has the specious name of bargain, it has often been nothing more than a fraud, or sale under compulsion. The man of Europe has been long accustomed to regard the possession of the soil as that which binds him to a place, and gives him the most secure and least doubtful kind of property. His habits of accumulation, and of transmitting to his children a permanent possession, make him covet the acquisition of land. In whatever country he has set his foot, and once got a dominion in the soil, neither contracts, nor mercy, nor feelings of humanity, nor the religion which he carries with him, have prevented him from seizing on the lands of the natives, and punishing their resistance with death. British colonization is at present conducted on principles more consistent with justice and humanity, as we see in the case of New Zealand. [CIVILIZATION.]

European colonies in Asia and America have been formed partly on the Roman or Venetian and partly on the Genoese or old Phœnician principle. When the Portuguese first began their voyages of discovery in the fifteenth century, they took possession of some islands or points on the coasts of Africa and of India, and left there a few soldiers or sailors under a military commander, who built a fort to protect the trade with the natives, and afterwards also to keep those natives under a sort of subjection. No great emigrating colonies were sent out by them, except in after times to Goa and the Brazils, which latter is really a colony of Portuguese settlers. The Spaniards, on the contrary, when they discovered America, took possession of the soil, and formed real colonies kept up by successive emigrations from the mother country. In the West India Islands the natives were made slaves, and by degrees became extinct under an intolerable servitude. On the mainland they were exterminated in some places, and in others reduced to the condition of serfs or tributaries. The Spaniards colonized a great part of the countries which they invaded. The Spanish American colonies had for their objects both agriculture and mining. The English North American colonies were the consequence of emigration, either voluntary or produced by religious persecution and civil war at home. The Puritans went to New England, the Quakers to Pennsylvania, and the Cavaliers to Virginia. They formed communities under charters from the crown, and local legislatures, but were still subject to the sovereignty of the mother country. The mother country sent its governors, and named, either directly or indirectly, the civil functionaries. The precise amount of obedience that the colonies then owed to the mother country cannot be exactly defined. The American revolution only

showed that it did not extend to a certain point, without showing how far it did extend.

A new feature has appeared in modern European colonization, that of penal colonies, which was an extension of the principle of the presidii on the coast of Barbary, already mentioned. Convicts were sent by England first to North America, and afterwards to New Holland, by France to Guiana, by Portugal to the coast of Angola, and by the Dutch to Batavia. They were either employed at the public works, or hired to settlers as servants, or were established in various places to cultivate a piece of land, for which they paid rent to the government. The policy of penal colonies has been much discussed. They may afford a temporary relief, but at a great cost to the mother country, by clearing it of a number of troublesome and dangerous persons, especially so long as criminal legislation and the system of prison discipline continue as imperfect as they are at present in most countries of Europe; but with regard to the convicts themselves, and the prospect of their reformation, everything must depend upon the regulations enforced in the colony by the local authorities. If we look, however, at the horrid places of confinement to which convicts are sent by most continental governments, and which are sinks of every kind of corruption and wretchedness, we cannot help feeling disposed to think more favourably of such colonies, under proper management, and to prefer the penal colonies of Great Britain to such ill-regulated places of punishment, which do not even affect to be places of reformation. [TRANSPORTATION.]

The advantages which may result from colonies to the mother country appear to be, the extension of the manufactures and the trade of the mother country by the demand for home products which arises in the colonies, the consequent impulse given to industry in the mother country, and the opportunities which industrious labourers and small capitalists have of mending their condition by emigrating to a country where labour is wanted, and where land can be had at a moderate price. The establishment of a colony draws capital from the mother country, which is a disadvantage to the parent state, unless the colony also draws off superabundant labourers; and without a due supply of labour the exportation of capital to a colony is unproductive in the colony, while it diminishes the wealth and the productive power of the parent state. If a colony is to be a matter of expense to the state, if the administration of it is to be maintained entirely or in part at the expense of the mother country, that is a direct loss to the parent state. And if, in order to support such colony, or the interests of any body of persons that are connected with it, the trade of the mother country is encumbered by regulations which diminish the free interchange of commodities with other countries, and render foreign products dearer to the citizen of the parent state, that is another manifest loss to the parent state. The history of modern colonization, on the whole, shows that the parent states have sustained great loss by the system of colonization that has been adopted; but it cannot therefore be inferred that colonization may not be placed on such a footing as will make it both advantageous to the parent state, and to those who live in the colony under its protection.

Much has been written upon this subject by political and economical writers, and the advantages of colonies have been exaggerated by some, and too much underrated by others. In a general point of view, as connected with the progress of mankind, a busy prosperous colony on a land formerly desert is undoubtedly a cheering sight. Commercial colonies or factories are likewise useful for protecting traders in remote and half-barbarous countries.

The Colonies of England are mentioned subsequently.

France has the French West India Islands, and French Guiana in America; Senegal, on the coast of Africa; the island of Bourbon; Pondicherry, in the East Indies; and Algeria, on the north coast of Africa.

Spain has lost her vast dominions in Mexico and South America, but has retained the fine islands of Cuba and

Puerto Rico; she has also the Philippine Islands.

Portugal has lost the Brazils, but has still numerous settlements on the coast of South and East Africa, at Angola, Benguela, Loango, and on the Mozambique; but these settlements are the most degenerated of all European colonies. In India, the Portuguese retain Goa, and they have a factory at Macao, and a settlement on the northern part of the island of Timor.

The Dutch have the islands of Curaçao and St. Eustaz, and Surinam in Guiana. In Asia they have the great colony of Batavia with its dependencies, various settlements on the coasts of Borneo, Sumatra, Celebes, and the Molucca islands.

The Danes are possessed of the islands of St. Cruz and St. Thomas in the West Indies; Christianburg, near Accra, on the Guinea coast; and Tranquebar in the East Indies.

The Swedes have the island of St. Bartholomew in the West Indies.

A society of North American philanthropists has founded, since 1821, on the Guinea coast, a colony of emancipated negroes, who have been transferred thither from the United States. The colony is called Liberia.

On the subject of modern colonies, Raynal, *Histoire des Etablissemens des Européens dans les deux Indes*, may be useful, though it is often exaggerated and turgid; but the best authorities are the original accounts of the various discoverers and founders of the colonies, such as have been published by Navarrete for the Spanish, and Barros for the Portuguese.

England was not the first among European nations that planted settlements in parts beyond Europe. But by her own colonization, and by the conquest of the settlements of other nations, she has now acquired a more extensive dominion of colonies and dependencies than any other nation.

The *English Colonies* have, as a general rule, local legislatures, elected by the people, and a governor and executive council named by the crown. In New South Wales, which obtained a legislative council in 1842 (5 & 6 Vict. c. 76), twelve of the thirty-six members are appointed by the crown and the remainder are elected by the people. The colonies which are governed by the secretary of state for the colonies without the interference of a local legislature are termed Crown Colonies. In such colonies there is an executive council, which consists partly of *ex-officio* members who hold offices at the pleasure of the crown, and partly of persons selected from among the principal inhabitants, who are likewise removable at pleasure. The foreign commerce of these colonies is regulated by the sovereign parliament of the mother country, and put on such a footing as generally to allow the products of the colonies admission into British ports on more favourable terms than the like products of other countries. To the amount of this protecting duty, the colonies then have the advantage of a monopoly in the markets of the mother country. The old strict colonial system of excluding foreign countries from direct commercial intercourse with the colonies, had the double object in view of securing all the supposed advantages of the exchange of British for colonial products, and giving employment to the British merchant navy. The rigour of this system, however, has gradually relaxed, and given way to clearer views of self-interest. Still the colonial system, as maintained by Great Britain, presents in many instances examples of foreign possessions which are expensive to the country without any equivalent advantages; and also of foreign possessions the trade with which is so regulated as to be designedly put on a footing which shall be favourable to the colony and unfavourable to the parent state. This is effected by discriminating or differential duties, as they are termed, the effect of which is to make the consumer of sugar (to take that as an example) in Great Britain pay to the favoured colonists a sum equal to the difference between the duty on colonial sugar and the higher duty on other sugar. The mother country which imposes this additional duty to protect her colonial subjects, not only gets no revenue by such ill-timed partiality in favour of her foreign dependencies, but she loses the increased revenue that she might have,

if she would allow her own people to buy foreign sugar on the same terms as the sugar of the colonies.

The direct expenditure in some of the colonies for the purposes of administration is beyond the means of the colonial revenues to meet, and the deficiency must of course be supplied by the parent state. Colonial possessions put some amount of patronage at the disposal of the home government, and colonies are therefore looked upon as profitable things by those who participate in the advantages of posts and places in them. On the other hand, those who only contribute to these expenses may reasonably ask for some proof of solid advantage to the parent state in return for the deficiency which she supplies. Setting aside the interests of those concerned in the administration of the colonies, it is asked, in many cases, what advantage does the rest of the nation receive? So far as some colonies may be desirable posts for protecting British commerce and shipping, the advantage of maintaining them may be fully equivalent to the expense. But in every particular instance the question as to the value of a modern colony to the mother country (omitting, as before mentioned, the value of the patronage to those who confer places in the colonies, and the value of the places to those who receive them) is simply this;—what advantage is this said colony to the productive classes of the country? a question not always easy to answer; but this is the question, the solution of which must decide whether a colony ought to be maintained or not, if we look only to the interests of the mother country. If we look to the interests of the colony, it may be in many, and certainly is in some cases, the interest of the colony to remain as it now is, under the protection and sovereign authority of the mother country; for it is protected at little or no cost to itself, and it often gets commercial advantages which, if the relationship to the mother country were to cease, would cease with it. But again the question recurs, what is the advantage to the mother country? If some advantage cannot be shown, the maintenance of a useless colony is a pure act of national benevolence towards the colony and to those few of the mother country who have places or property in it. If our present relation with a colony such as Jamaica or Canada entails any expense on the mother country, we may ask whether all the commercial advantages that result from this relation, whatever they may be, would not be equally secured, if only a free commercial relation existed, and that of administration were to cease. In support of this view, it is shown that the commerce of Great Britain with the United States, now free and independent, has increased most wonderfully since the separation, and probably more rapidly than it would have increased under the colonial system. This being the case, a similar increase might be anticipated in the trade with all those foreign possessions whose trade is really of any importance. This argument, to which it is difficult to reply, is met by saying that if we give up those colonies that cause expenditure on the part of the mother country, some of them at least would be a prize for other nations, who would exclude us from the commerce of those former colonies, or allow it only on unfavourable terms; or that these colonies would throw themselves into the arms of foreign nations, and the same result would follow. To this it is replied, that no other nation is in a condition to take on itself the management of expensive colonies; that nations, like individuals, will, if let alone, buy where they can buy cheapest, and sell where they can sell dearest; and that if we should be shut out from the commerce of any of our present colonies, there are equally good or better markets from which we are now in part or altogether excluded owing to those very regulations, which only exist because we have colonies to maintain.

The colonial administration of the British colonies is an important department of the general administration. At the head of it is the principal colonial secretary.

Historical and Statistical View of British Colonies, &c.

The word Colony is not applicable to all the foreign possessions of Great Britain. Gibraltar, Malta, and Heligoland may be more correctly termed Possessions; Port Essington, on the northern

coast of Australia, is a Settlement; British India is a Dependency, and so likewise are the Channel Islands and the Isle of Man; Van Diemen's Land, New Zealand, &c. are Colonies. The seven Ionian Islands are under the protection of Great Britain. Tenasserim, Singapore, Penang, Malacca, Aden, and some other places, are Dependencies of the East India Company. The Chatham Islands are Dependencies of New Zealand, and Norfolk Island of Van Diemen's Land. In the British Colonies the waste lands belong to the British Crown, and they are now disposed of by sale only, under one tolerably uniform system. The mode in which these lands are sold, and leased, or depastured under licences, and the mode in which emigration to them is now conducted, are considered under the head of EMIGRATION.

I. Date of Capture, Cession, or Settlement.

Canada, capitulation, 18th Sept. 1759, and 8 Sept. 1760, and cession by treaty, 1763.

New Brunswick, Nova Scotia, Cape Breton, Prince Edward's Island, and Newfoundland—fisheries or settlements, established soon after their discovery in 1497.

Antigua, settlement, 1632.

Barbados, settlement, 1605.

Dominica and Grenada, ceded by France, 1763.

Jamaica, capitulation, 1655.

Montserrat, settlement, 1632.

Nevis, settlement, 1628.

St. Kitt's, settlement, 1623.

St. Lucia, capitulation, 22 June, 1803.

St. Vincent and Tobago, ceded by France, 1763.

Tortola and Anguilla, settlement, 1666.

Trinidad, capitulation, 18 Feb. 1797.

Bahamas, settlement, 1629.

Bermudas, settlement, 1609.

British Guiana, including Demerara, Essequibo, and Berbice, capitulation, September, 1803.

Honduras, treaty, 1670.

Gibraltar, capitulation, 4 Aug. 1704.

Malta and Gozo, capitulation, 5 Sept. 1800.

Cape of Good Hope, capitulation, 10 Jan. 1806.

Sierra Leone, settlement, 1787.

Gambia, settlement, 1618.

Gold Coast, African Forts, 1618.

Ascension Island, taken possession of by permission of Spain, 1827.

Fernando Po, taken possession of, 1815.

Ceylon, capitulation, 17 Sept. 1795.

Mauritius, capitulation, 3 Dec. 1810.

New South Wales, settlement, 1787.

Van Diemen's Land, settlement, 1803.

Western Australia, settlement, 1829.

South Australia, settlement, 1834.

New Zealand, settlement, 1839.

Falkland Islands, taken possession of, 1833.

St. Helena, ceded by Holland, 1673.

Hong-Kong, treaty, 1842.

The immense territory in North America which lies north of the British Colonies, and extends to the Pacific, where it is bordered on the north-west by the Russian possessions, and on the south by the Territory of the United States, is administered by the Hudson's Bay Company under a charter. Another vast territory in North America, which lies between the Rocky Mountains and the Pacific, and is called the Oregon Territory, is claimed by Great Britain as far south as the Columbia river; but it is partly occupied by citizens of the United States, and partly by British subjects; and there are conflicting claims between the two governments as to the right of sovereignty.

II. Population of the principal British Colonies in 1842, or according to the latest census.

Eastern (Lower) Canada	678,590
Western (Upper) Canada	486,055
New Brunswick . .	156,142
N. Scotia and C. Breton	178,237
Prince Edward's Island	47,034
Newfoundland . .	75,094
Antigua . .	36,405
Barbados . .	122,198
Dominica . .	18,291
Grenada . .	29,650
Jamaica . .	377,433
Montserrat . .	7,119
Nevis . .	7,470
St. Kitt's . .	21,578
St. Lucia . .	21,001
St. Vincent . .	27,248

Tobago	13,208
Tortola	8,500
Anguilla	2,934
Trinidad	60,319
Bahamas	25,244
Bermudas	9,930
Demerara and Essequibo, and Berbice	102,354
Honduras	10,000
Gibraltar	11,318
Malta and Gozo	118,759
Cape of Good Hope	159,451
Sierra Leone	39,839
Gambia	4,495
Ceylon	1,421,631
Mauritius	174,699
New South Wales	130,856
Van Diemen's Land	50,216
Western Australia	3,476
South do.	15,527
New Zealand	17,000
St. Helena	4,834

III. Form of Government.

By a Governor, Legislative Council, and Assembly.

Canada	Jamaica
New Brunswick	Montserrat
N. Scotia and C. Breton	Nevis
Prince Edward's Island	St. Kitt's
	St. Vincent
	Tobago
Antigua	Tortola
Barbados	Anguilla
Dominica	Bahamas
Grenada	Bermudas

By a Governor and Legislative Council.

New South Wales	Van Diemen's Land

By a Governor and Executive Council, and Orders of Queen in Council.

St. Lucia	Gibraltar
Trinidad	Malta and Gozo
British Guiana, consisting of Demerara, Essequibo, and Berbice	Cape of Good Hope
	Ceylon
	Mauritius
	Hong-Kong

By a Governor and Executive Council, and British Acts of Parliament.

Sierra Leone	South Australia
Gambia	New Zealand
Gold Coast	Falkland Islands
Western Australia	St. Helena.

By a Superintendent and Magistrates. Honduras, &c.

IV. Imports into the United Kingdom from British Colonies, and Declared Value of British and Irish Produce exported from the United Kingdom to the same:

	Imports. £.	Exports. £.
Canada	922,731	1,589,169
New Brunswick	171,155	146,513
Nova Scotia	50,801	268,149
P. Edward's Island & Newfoundland	246,568	276,650
Antigua	272,397	87,338
Barbados	520,097	266,942
Dominica	109,293	32,258
Grenada	133,857	48,882
Jamaica	1,818,227	1,161,146
Montserrat	22,574	3,884
Nevis	38,790	4,884
St. Kitt's	164,426	55,533
St. Lucia	132,795	23,750
St. Vincent	234,233	72,625
Tobago	82,564	21,845
Tortola	9,316	97
Trinidad	572,879	223,647
Bahamas	59,626	45,448
Bermuda	16,958	55,103
Demerara and Essequibo	788,884	332,613
Berbice	174,347	43,625
Honduras	864,502	111,804
Gibraltar	39,891	937,719
Malta	232,414	289,304
Cape of Good Hope	280,324	369,076
Sierra Leone, &c.	89,823	132,112
Ceylon	1,012,266	248,841
Mauritius	960,396	244,922
New South Wales	298,507	598,645
Van Diemen's Land	134,150	260,730
Western Australia	1,297	22,579
South Australia	23,127	34,212
New Zealand	10,998	42,758
Falkland Islands	1,077	384
St. Helena	3,729	17,530

V. Tonnage Entered Inwards and Cleared Outwards, in the trade between British colonies and the United Kingdom:

	Entered. Tons.	Cleared Tons.
Canada	322,145	267,492
New Brunswick	173,544	107,965
Nova Scotia	25,309	44,753
P. Edward's Island & Newfoundland	19,450	25,360
Antigua	10,298	13,383
Barbados	26,085	51,758
Dominica	3,051	2,678

	Entered. Tons.	Cleared. Tons.		Entered. Tons.	Cleared. Tons.
Grenada	4,358	11,045	Bermudas . . .	968	18,488
Jamaica	47,776	61,923	Berbice	6,158	5,985
Montserrat . . .	804	481	Honduras . . .	13,028	5,257
Nevis	1,995	1,147	Gibraltar . . .	20,602	43,508
St. Kitt's . . .	6,072	5,271	Malta and Gozo . .	21,583	40,141
St. Lucia	3,321	2,238	Cape of Good Hope	4,980	16,408
St. Vincent . . .	7,911	7,952	Sierra Leone, &c. .	18,464	13,519
Tobago	3,323	3,752	Ceylon	9,666	10,959
Tortola	146	283	Mauritius . . .	28,650	16,397
Trinidad . . .	19,219	21,866	Australian Settlements	22,865	51,234
Bahamas . . .	3,864	2,312	New Zealand . .	1,341	9,651
Demerara and Essequibo . . .	33,316	45,525	Falkland Islands .	92	216
			St. Helena . . .	350	2,086

VI. Summary of Population and Trade.

	N. American Colonies.	W. Indies.	Other Colonies.	Totals.
Population, 1842, or last census .	1,621,152	901,082	2,152,101	4,674,335
Imports from into the United Kingdom	1,391,255	6,015,765	3,087,999	10,495,019
Declared Value of British and Irish produce and manufactures exported	2,280,481	2,591,424	3,198,812	8,070,717
Vessels entered inwards from the United Kingdom;				
Ships	1,552	714	522	2,788
Tons	540,448	191,688	128,593	860,729
Cleared outwards from the United Kingdom:				
Ships	1,329	896	852	3,077
Tons	4,455,570	261,344	204,119	911,033

VII. Revenue and Expenditure of British Colonies in 1842.

	Revenue.	Expend.
Gibraltar . . .	£31,454	£31,445
Malta	120,852	110,759
Canada	476,304	465,141
Nova Scotia . .	95,899	84,869
New Brunswick .	81,920	55,792
Prince Edward's Island	19,626	13,411
Newfoundland . .	56,686	40,787
Bermuda . . .	19,342	17,435
Honduras . . .	13,459	12,515
Jamaica . . .	321,945	303,195
Barbados . . .	17,707	15,957
Tobago	8,532	8,514
Grenada . . .	15,933	12,643
St. Lucia . . .	11,694	11,409
St. Vincent . .	13,892	12,236
Antigua . . .	17,110	15,880
Montserrat . . .	£1,871	£2,244
St. Kitt's . . .	6,892	6,933
Nevis	8,834	8,678
Virgin Islands . .	2,332	2,440
Dominica . . .	8,504	7,880
British Guiana .	243,985	237,759
Trinidad . . .	109,545	71,674
Bahama . . .	21,943	23,570
Mauritius . . .	259,075	206,355
St. Helena . . .	17,756	17,643
Ceylon	311,248	301,791
Cape of Good Hope	226,261	226,025
Sierra Leone . .	26,209	24,165
Gambia	9,592	7,472
New South Wales .	844,265	804,982
Van Diemen's Land	182,622	160,003
Western Australia .	18,334	17,031
South Australia .	84,531	81,813
New Zealand . .		

VIII. Principal items of Revenue and Expenditure in British Colonies in the year 1842.

Gibraltar. Revenue: — Wine duty, 2717*l.*; spirit duty, 8101*l.*; auction fees, 3207*l.*; ground and house rents, 3836*l.*; post rates and duties, 5806*l.*; licences on taverns and wine-houses, 3153*l.* Expenditure:—Government, 5013*l.*; post department, 5031*l.*; police, 3889*l.*; revenue department, 3527*l.*; judicial, 2975*l.*; civil secretary's department, 1862*l.*

Malta. Revenue: — Import duties, 81,649*l.*; tonnage dues, 4618*l.*; quarantine dues, 3855*l.*; post-office, 2431*l.* Expenditure: — Governor's establishment, 5177*l.*; chief secretary's office, 3142*l.*; courts of justice, 6575*l.*; interior police, 7374*l.*; marine police and quarantine, 6240*l.*; University and Lyceum, 2679*l.*; primary schools, 679*l.*; charitable institutions, 4173*l.*; pensions, 9920*l.*; alms to the poor, 3086*l.*; hospitals and asylums, 9061*l.*

Canada. Revenue:-Customs, 238,784*l.*; excise, 27,617*l.*; territorial, 31,648*l.*; public works, 11,160*l.*; American Land Company, 10,000*l.* Expenditure:—Governor-general, 6937*l.*; judicial establishment, 15,666*l.*; pensions and salaries of crown officers and contingencies, 22,716*l.*; chief secretary, provincial secretaries (east and west) and their offices, and registrar, 12,981*l.*, &c. &c., making a total for civil establishments of 74,566*l.* which is provided for in the Union Act. The chief expenses provided by provincial enactments are,—Legislature, 14,423*l.*; interest on loans, 68,554*l.*; education, 20,478*l.*; rural police, 10,999*l.*; improving navigation, 11,029*l.*; hospitals and charities, 11,064*l.*; printing laws, &c., 9587*l.*; roads and bridges, 4917*l.*; public works, 179,291*l.*; emigration, 12,388*l.*

Nova Scotia. Revenue: — Customs, 30,937*l.*; excise, 35,022*l.*; rents, &c. of coal-mines, 4389*l.* Expenditure:—Governor and civil establishment, exclusive of customs, 11,374*l.*; judicial, 5614*l.*; ecclesiastical, 7640*l.*; custom-house, 10,069*l.*; legislature, 4707*l.*; roads and bridges, 27,319*l.*; grammar schools, 1095*l.*; common schools, 1095*l.*; colleges, 1225*l.*

New Brunswick. Revenue: — Provincial revenue, 20,935*l.*; customs' duties under imperial acts, 15,001*l.* Expenditure:—Civil list, 13,050*l.*; pay and expense of legislature, 6991*l.*; collection and protection of revenue, 3202*l.*; parish and Madras schools, 12,480*l.*; college and grammar schools, 2025*l.*; roads, 6373*l.*; bye roads and bridges, 14,853*l.*

Prince Edward's Island. Revenue:—Customs, 5931*l.*; land assessment, 1896*l.*; parliamentary grant, 3070*l.*; governor, judicial and civil establishments, 5116*l.*; roads, bridges, &c., 5387*l.*

Newfoundland. Revenue:—Customs, 41,119*l.* Expenditure:— Civil departments, 24,611*l.*, including customs' establishment, 6038*l.*; courts of law, 5837*l.*; police, 3785*l.*; legislature, 3255*l.*

Bermudas. Revenue:—Customs, 7582*l.*; parliamentary-grant salaries, 4049*l.* Expenditure:—Civil establishments, 10,718*l.*, including 2988*l.* for the governor and his establishment.

Honduras. The principal item of revenue is 4721*l.* duty on wines, spirits, and cordials.

St. Helena. Customs' revenue, 6441*l.*; harbour dues, 2555*l.*; and the total expense of the civil establishments is 14,064*l.*

Ceylon. Revenue: — Sea customs, 90,476*l.*; land customs, 10,305*l.*, principally bridge and ferry tolls; land rents, 43,318*l.*; licences for arrack and toddy farms, 44,768*l.*, and for salt farms, 31,322*l.*; stamps, 17,560*l.*; postage, 5163*l.* Expenditure:—Governor, 7100*l.*; archdeacon of Colombo, 7207*l.*; schools, 3318*l.*; with other items in the civil department, 95,127*l.*; judicial establishment, 47,603*l.*; revenue department, 49,784; military expenditure, part of which is defrayed by the imperial government, 97,000*l.*

Cape of Good Hope. There are assessed taxes on servants, horses, carriages, a capitation and an income tax, which produce 7632*l.*; stamps, 19,288*l.*; customs, 56,485*l.*; auctions, 11,627*l.*; post-office, 6454*l.* The expense of the civil establishments was 17,817*l.*; judicial, 10,799*l.*; revenue and magistracy, 22,584*l.*; church establishments, 8049*l.*; post-office, 5769*l.*; police, 5861*l.*

Sierra Leone. The customs' duties

were 7584*l.*, and the greater part of the disbursements are paid out of parliamentary grants. The expenses of the liberated African department were upwards of 9000*l.*

New South Wales. Revenue:—Sydney, Spirits imported, 107,924*l.*, and 5155*l.* on spirits distilled; tobacco duty, 41,222*l.*; duties ad valorem on foreign goods, 24,944*l.*; post-office, 17,266*l.*; auctions, 10,094*l.*; spirit licences, 15,275*l.*; assessments on stock beyond the limits of location, 15,357*l.* Port Philip revenue:—Spirits, 41,510*l.*; tobacco, 10,394*l.*: ad valorem duties, 7229*l.*; spirit licences, 2923*l.*; assessments on stock, 6107*l.* In the Sydney district the proceeds of land sales were 11,387*l.*; quit-rents, 14,855*l.*; licences to depasture-stock on crown lands, 8782*l.* In the district of Port Philip the sale of land produced 17,728*l.*; pasture licences, 7775*l.* The cost of the civil establishments was 93,505*l.*, which included 20,053*l.* for the surveyor-general's department; 12,000*l.*, colonial engineer; 18,484*l.*, post-office. The judicial department cost 23,812*l.*; police, 77,882*l.*; gaols, 10,242*l.*; clergy, 18,144*l.*, which included payments to the Established Church, Presbyterians, Wesleyans, and Roman Catholics; and 7568*l.* was paid on account of the schools belonging to those religious denominations; and the sum of 12,867*l.* was contributed towards erecting their churches and chapels, and dwellings for their ministers. Bounties on immigration at Sydney, 143,413*l.*; at Port Philip, 99,492*l.* There were other disbursements on account of Port Philip amounting to 59,007*l.*

Van Diemen's Land.—Revenue from Customs, 80,969*l.*; Post-office, 7321*l.*; retail wine and spirit licences, 6550*l.*; quit rents, 3423*l.*; land sales, 30,518*l.* Expenditure: — Governor and judges, 5351*l.*; Customs establishment, 5024*l.*; Post-office, 6081*l.*; police, 36,395*l.*; courts of law and their officers, 9775*l.*; public works, roads, bridges, and public buildings, 20,571*l.*; Church of England, 10,864*l.*; Church of Scotland, 2697*l.*; Church of Rome, 1873*l.*; Queen's Orphan Schools, 5683*l.*; day-schools, 3775*l.*; Wesleyan and Methodist missions, 525*l.*

Western Australia.—The sum of 4493*l.* was received on imported spirits, and there are other import duties and various licences. The total expense of the civil establishment was 9778*l.*, and the largest items were 1729*l.* maintenance of a colonial vessel, and 1606*l.* for the survey department.

South Australia.—The sum of 36,607*l.* was received on account of drafts drawn on the home government; and the principal items of local revenue were, Customs' duties on spirits, 8502*l.*; on tobacco, 3504*l.*; licences, 2271*l.*; land sales, 17,830*l.* The total expenses of the civil establishment amounted to 34,410*l.*, which includes 1725*l.*, governor and judge; survey department, 3434*l.*; Customs, 2279*l.*; harbour department, 2019*l.*; police, 8551*l.*

Jamaica.—The principal items of receipt are given under the following heads:—Additional Duty Act, 18,252*l.*; Customs' Tonnage Act, 14,200*l.*; Import and Export Act, 127,821*l.*; Land-tax Act, 19,980*l.*; Rum Duty Act, 43,239*l.*; Stamp Duty Act, 4800*l.*; Sugar Duty Act for island consumption, 8596*l.*; and a similar duty on coffee, 750*l.*; Tea Duty Act, 1290*l.*; tax on stock, wheels, hereditaments, rent, trade, dogs, &c. &c., 66,587*l.* Expenditure:—Revenue establishments, 35,495*l.*; clergy stipends, 11,500*l.*; curates' stipends, 15,963*l.*; police, 41,399*l.*; immigration, 33,323*l.*; public hospital, 11,371*l.*; roads and bridges, 10,106*l.*; military, 15,166*l.*; judicature, 55,333*l.*; Assembly, 3969*l.*; governor, his secretary and island agent, 12,078*l.*, but in this sum the salaries of five quarters are included. The debt of the island was 613,297*l.*

British Guiana. — Tax on income, 12,558*l.*; on produce, 47,908*l.*; wine and spirit duties, 14,229*l.*; import duty, 66,160*l.*; rum duty, 25,189*l.*; spirit retail licences, 15,039*l.*; shop-tax, 1551*l.*; huckster licences, 3241*l.*; colony craft-tax, 1086*l.* Expenditure:—Civil List, 36,621*l.*; police, 29,457*l.*; gaols, 8906*l.*; colonial hospital, 9010*l.*; immigration, 39,624*l.*; penal settlement expenses, 7515*l.*; grants to the Established, Dutch, and Roman Catholic churches.

Trinidad.—There are several kinds of import duties, and under the head "foreign duties on imports" the receipts were

17,507*l.*; import duties, 8834*l.*; wines and spirit duty, 1495*l.*; tonnage duty, 3930*l.*; export duties, 13,745*l.*; fees of public offices, 4182*l.*; spirit licences, 3200*l.* The civil, judicial, ecclesiastical, and police establishments cost 33,894*l.*

Other West India Islands.—It is not necessary to give details of the revenue and expenditure of each island. The revenue is principally derived from customs' duties, licences, export duties on island produce, direct taxes, licences, and some other sources; and it is expended in defraying the cost of civil establishments, improvement of roads, and for churches, schools, &c. &c.

Mauritius. — Revenue of Customs: Imports, 53,968*l.*; exports, 37,902*l.*; port collections, 14,312*l.*; direct taxes, 5269*l.*; licences, 35,136*l.*; registration fees, 33,162*l.*; stamps, 5240*l.*; canteens, 9070*l.* Expenditure:—Civil List, 26,000*l.*; judicial, 32,050*l.*; ecclesiastical, 3273*l.*

The mother-country does not levy taxes or duties in any colony except for their use; but the colonies do not usually defray all the cost of their own establishments, and the sum of about 400,000*l.* a-year is annually voted by parliament for colonial establishments. The colonial revenues are expended in salaries, and in maintaining establishments which are often not only expensive, but sometimes nearly useless. The charges of collecting colonial revenues are frequently greater than the produce of the revenue. The sum of 166,067*l.* of the public money was voted by Parliament in 1838 for religious establishments in the colonies: of this sum 134,450*l.* was for the established church; church of Scotland 9967*l.*; Roman Catholic church 14,763*l.*; Dutch church 6886*l.*; besides 2175*l.* to Jews, Baptists, and Wesleyans for religious purposes. But it is the drain upon the military resources of the mother-country which render the British colonies so heavy a burden. From 1839 to 1843 inclusive, the charges incurred on account of Canada in respect of the army, navy, ordnance, and commissariat, was 5,532,957*l.* (Parl. Paper, 304 Sess. 1844.)

COMBINATION LAWS. The laws known by this name were repealed in 1824. Till then any combination of any two or more masters, or of any two or more workmen, to lower or raise wages, or to increase or diminish the number of hours of work, or quantity of work to be done, was punishable at common law as a misdemeanor: and there were also thirty-five statutes in existence, most of them applying to particular trades, prohibiting combinations of workmen against masters. The act passed in 1824 (5 Geo. IV. c. 95) repealed all the statute and common law against combinations of masters and of workmen, provided a summary mode of conviction, and a punishment not exceeding two months' imprisonment for violent interference with workmen or masters, and for combinations for violent interference; and contained a proviso with regard to combinations for violent interference, that no law in force with regard to them should be altered or affected by the act. But all the common law against combinations being repealed by the act, this proviso was considered as of no force; and the act also went beyond the intentions of the framers in legalizing combinations unattended with violence for the purpose of controlling masters in the mode of carrying on their trades and manufactures, as well as peaceable combinations to procure advance of wages or reduction of hours of work. The act was passed after an inquiry into the subject by a committee presided over by Mr. Hume, which reported to the house the following among other resolutions:—

"That the masters have often united and combined to lower the rates of their workmen's wages, as well as to resist a demand for an increase, and to regulate their hours of working, and sometimes to discharge their workmen who would not consent to the conditions offered to them; which have been followed by suspension of work, riotous proceedings, and acts of violence.

"That prosecutions have frequently been carried on under the statute and the common law against the workmen, and many of them have suffered different periods of imprisonment for combining and conspiring to raise their wages, or to resist their reduction, and to regulate their hours of working.

"That several instances have been

stated to the committee of prosecutions against masters for combining to lower wages, and to regulate the hours of working; but no instance has been adduced of any master having been punished for that offence.

"That it is the opinion of this committee that masters and workmen should be freed from such restrictions as regard the rate of wages and the hours of working, and be left at perfect liberty to make such agreements as they may mutually think proper.

"That therefore the statute laws which interfere in these particulars between masters and workmen should be repealed; and also that the common law, under which a peaceable meeting of masters or workmen may be prosecuted as a conspiracy, should be altered."

Immediately after the passing of this act a number of widely organized and formidable combinations arose in various trades and manufactures for the purpose of controlling the masters as to the way in which they should conduct their business; and the extent to which the act had repealed the common law being doubtful, and the act having clearly gone beyond the resolutions on which it was grounded in legalizing combinations, Mr. Huskisson, then President of the Board of Trade, moved early in the session of 1825 for a committee to consider the effects of the act 5 Geo. IV. c. 95; and a committee was appointed with Mr. (afterwards Lord) Wallace, then Vice-President of the Board of Trade, for its chairman. This committee recommended the repeal of the act of the previous session, and the enactment of another; and in consequence of their recommendation the 6 Geo. IV. c. 129, was passed, which is the act now in force relative to combinations.

This act repealed the 5 Geo. IV. c. 95, and all the statutes which that act had repealed. It relieved from all prosecution and punishment persons meeting solely to consult upon rate of wages or hours of work, or entering into any agreement, verbal or written, on these points. And it provided a punishment of not more than three months' imprisonment, with or without hard labour, for any one using violence or threats to make a workman leave his hiring, or return work unfinished, or refuse to accept work, or belong to any club, or contribute to any common fund, or pay any fine for not belonging to a club, or contributing to a common fund, or refusing to conform to any rules made for advance of wages or lessening of the hours of work, or regulations of the mode of carrying on any business, and for any one using violence to make any master alter his mode of carrying on his business.

By the act 6 Geo. IV. c. 129, therefore, combinations of masters and workmen to settle as to rate of wages and hours of labour are made legal and freed from all punishment; but the common law remains as it was as to combinations for otherwise controlling masters.

By 9 Geo. IV. c. 31, assaults in pursuance of a combination to raise the rate of wages are made punishable by imprisonment and hard labour.

A committee of the House of Commons sat in 1838, presided over by Sir Henry Parnell, to consider the effect of combinations of workmen; but nothing followed from this committee.

COMMANDER. [CAPTAIN.]

COMMANDERY, a species of benefice attached to certain foreign military Orders, usually conferred on knights who had done them some especial service. According to Furetière, these Commanderies were of different kinds and degrees, as the statutes of the different orders directed. The name of Commandery in the Order of St. Louis was given to the pension which the King of France formerly assigned to twenty-four commanders of that order, of whom eight received 4000, and sixteen 3000 livres each. The Order of Malta had commanderies of justice, which a knight obtained from long standing; and others of favour, of which the grand master had the power of disposal.

In England, commanderies were the same amongst the Knights Hospitallers as preceptories had been among the Knights Templars: they were societies of those knights placed upon some of their estates in the country under the government of a commander, who were allowed proper maintenance out of the

revenues under their care, and accounted for the remainder to the grand prior at London. At the dissolution of religious houses, in the time of Henry VIII., there were more than fifty of these commanderies in England, subordinate to the great priory of St. John of Jerusalem. A few of these held productive estates, and had even the appearance of being separate corporations, so much so as to have a common seal; but the greater part were little more than farms or granges. The Templars' term of preceptory was as frequently used to designate these establishments as the term commandery. (Furetière, *Dictionnaire Universel*; Tanner, *Notitia Monastica*, edit. 1787, pref. p. xvii.; Dugdale's *Monasticon Anglicanum*, last edit. vol. vi. pp. 786, 800.)

COMMENDAM. [BENEFICE, p. 350.]

COMMISSARY, an officer who is delegated by a bishop to act in a particular part of the diocese, to exercise jurisdiction similar in kind to that exercised by the chancellor of the diocese in the consistory court of the diocese. A commissary has, generally speaking, the authority of official principal and vicar-general within his limits. An appeal lies from his decisions to the metropolitan. In some dioceses there is a commissary court for each archdeaconry. The commissarial courts were established for the convenience of the people in parts of the diocese remote from the consistory court. A commissary must be learned in the civil and ecclesiastical law, a master of arts or bachelor of law, not under the age of twenty-six, and he must subscribe the Thirty-nine articles (Canon 127).

In Scotland the same classes of questions which in other parts of Europe were arrogated to the ecclesiastical judicatories came under the authority of the bishop's courts while the episcopal polity continued, and subsequently devolved on special judges, who were called commissaries. The four commissaries of Edinburgh constituted the Supreme Commissary Court, which had jurisdiction in questions of divorce, and of declarations of the existence or non-existence of marriage. The district commissaries had the administrative authority of confirming executors to persons deceased, a function resembling the granting of letters of administration in England. By 4 Geo. IV. c. 97, the functions of the provincial commissaries were vested in the sheriffs of the respective counties, who, before the passing of that act, were usually appointed the commissaries of their districts. By 11 Geo. IV. 1 Wm. IV. c. 69, the jurisdiction of the commissaries of Edinburgh, as above, was vested in the Court of Session.

COMMISSION. This word appears to be used generally to express the instrument by which authority is delegated by one person to another; and it is particularly used to express the instrument by which the crown gives authority to a person or persons to do any act. A commission, then, is a warrant or letter patent by which a person is empowered, or persons are empowered, to do any act, either ordinary or extraordinary. Some commissions in England issue from the king under the Great Seal, and others are only signed by the king. There was formerly a High Commission Court, but it was abolished by 16 Charles I. c. 11, and 13 Charles II. c. 2.

An enumeration of some of the principal kinds of commissions will show the nature of the power thereby given, and the objects of it:—

Commissions of Oyer and Terminer, and Gaol Delivery. [ASSIZE.]

Commission of Lunacy. [LUNACY.]

Commission of the Peace. [JUSTICES OF THE PEACE.]

Commissions, Naval and Military, and others. [COMMISSIONS, MILITARY.]

COMMISSION. [AGENT; BROKER; FACTOR.]

COMMISSION ECCLESIASTICAL. [ECCLESIASTICAL COMMISSION.]

COMMISSION, in military affairs, is the document by which an officer is authorized to perform duty for the service of the state.

In England in former times the regular mode of assembling an army, either to resist an invading enemy, or to accompany the king on a foreign expedition, was by sending a royal command to the chief barons and the spiritual lords, that they should meet at a given time and

place with their due proportion of men, horses, &c. properly equipped, according to the tenure by which they held their estates; and these *tenants in capite* appear to have appointed by their own authority all their subordinate officers. But commissions were granted by the kings to individuals, authorizing them to raise men for particular services; thus, in 1442, Henry VI. gave one to the governor of Mantes, by which he was appointed to maintain 50 horsemen, 20 men-at-arms on foot, and 210 archers, for the defence of that city. According to Père Daniel, the commission was written on parchment, and, that it might not be counterfeited, the piece was divided, by cutting it irregularly, into two portions, of which doubtless each party retained one.

Commissions of array, as they were called, were also issued by the king in England, probably from the time of Alfred, for the purpose of mustering and training the inhabitants of the counties in military discipline; and in the reign of Edward III. the parliament enacted that no person trained under these commissions should be compelled to serve out of his own county except the kingdom were invaded. Of the same nature as these commissions of array was that which, in 1572, when the county was threatened with the Spanish invasion, Queen Elizabeth issued to the justices of the peace in the different counties, authorizing them to muster and train persons to serve during the war. Those magistrates were directed to make choice of officers to command bodies of 100 men and upwards; and such officers, with the consent of the magistrates, were to appoint their own lieutenants. This privilege of granting commissions to the officers of the national militia continued to be exercised by the lord-lieutenants of counties, the king having the power of confirming or annulling the appointments; and it was made law in the reign of Charles II. The militia has been disembodied for several years; but commissions in the yeomanry cavalry, a force which is still kept up in England, are granted by the lord-lieutenants. It appears, however, that before the Revolution, the lieutenants and ensigns were recommended for commissions by the captains of the companies.

In the French service, between the reigns of Francis I. and Louis XIV., we find that the kings reserved to themselves the nomination of the principal commanders only of the legions or regiments, and that the commanders were permitted to grant commissions under their own signature and seal to the subordinate officers, who were charged with the duty of raising the troops and instructing them in the use of arms.

In the British regular army all the commissions of officers are signed by the king. The several commissions in the navy are a sort of warrant, and are signed by the Lords Commissioners of the Admiralty; but the documents are called commissions, and they are signed in the name of the king. In the navy, in the regiment of artillery, and in the corps of engineers and marines, the commissions are conferred without purchase; and to a certain extent this is the case with the commissions granted to officers of the line. Those cadets who have completed a course of military education in the Royal College at Sandhurst are so appointed. In other cases, gentlemen obtain leave to enter the army by the purchase of an ensigncy, the prices of which, in the different classes of troops, are regulated by authority; and they proceed to the higher grades on paying the difference between the price of the grade which they quit and of that which they enter.

The commissioned officers of a battalion of infantry are as follow: Field-officers—colonel, lieutenant-colonel, and major. Regimental officers — captains, lieutenants, and ensigns. Staff-officers—chaplain, adjutant, quartermaster, and surgeon.

The prices of commissions in the British army are as follows:—Life Guards—lieutenant-colonel, 7250*l.*; major, 5350*l.*; captain, 3500*l.*; lieutenant, 1785*l.*; cornet, 1260*l.* Royal Regiment of Horse Guards—lieutenant-colonel, 7250*l.*; major, 5350*l.*; captain, 3500*l.*; lieutenant, 1600*l.*; cornet, 1200*l.* Dragoon Guards and Dragoons — lieutenant-colonel, 6175*l.*; major, 4575*l.*; captain, 3225*l.*; lieutenant, 1190*l.*; cornet, 840*l.* Foot

Guards—lieutenant-colonel, 9000*l.*; major, with rank of colonel, 8300*l.*; captain, with rank of lieutenant-colonel, 4800*l.*; lieutenant, with rank of captain, 2050*l.*; ensign, with rank of lieutenant, 1200*l.* Regiments of the Line—lieutenant-colonel, 4500*l.*; major, 3200*l.*; captain, 1800*l.*; lieutenant, 700*l.*; ensign, 450*l.* Fusilier and Rifle regiments—1st lieutenant, 700*l.*; 2nd lieutenant, 500*l.*

Commissions in the military service of the East India Company are given by the Court of Directors.

In the British colonies where a militia is kept on foot commissions are given in it by the governor as captain-general.

In the National Guards of France the officers are selected by their comrades.

COMMISSIONERS, LORDS. [ADMIRAL; ASSENT, ROYAL; PARLIAMENT.]

COMMISSIONERS OF BANKRUPTS. [BANKRUPT.]

COMMISSIONERS OF LUNACY. [LUNACY.]

COMMISSIONERS OF SEWERS. [SEWERS.]

COMMITTEE OF PUBLIC SAFETY, Comité de Salut Publique, the name given to a committee of members of the National Convention, who exercised a dictatorial power in France for about fifteen months, which is known by the name of the Reign of Terror. The National Convention having abolished the royal authority at the end of 1792, and proclaimed the republic, found themselves invested with the whole sovereign power. They delegated the executive part of it to several committees or departments of government, and placed a Committee of Public Safety over all. This committee consisted of ten members of the Convention, appointed for three months, but re-eligible indefinitely: they were commonly called the decemvirs. Their business was to watch over the conduct of the public authorities, and to promote the cause of the revolution. By degrees their powers attained a most extensive range; all the constituted authorities and public functionaries, civil and military, were placed under their immediate inspection. This was after the successful insurrection on the 31st of May, 1793, when the Mountain or terrorist party in the Convention gained the victory, by means of the armed multitudes of Paris, over their fellow-deputies of the Gironde party, who wished to govern the republic according to legal forms, and when the leaders of the Girondins were sent to prison and to the scaffold. From that time Robespierre and his friends monopolized all the power of the Committee of Public Safety. By a decree of the Convention, 4th of December, 1793, the committee had the power of appointing and removing all the administrative authorities, all the agents and commissioners sent to the departments and to the various armies, and the agents sent to foreign countries. They were to watch and direct public opinion, and denounce all suspected persons. By another decree, of 28th July, 1793, the committee was invested with the power of issuing warrants of arrest. There was another committee, called de Sureté Générale, which has been sometimes confounded with the Committee of Public Safety, but was subordinate to it, and concerned itself with the internal police and judicial affairs. "The Committee of Public Safety," says a witness and a member of the Convention, "did not manifest its ambition at the outset; it was useful at first. But that prudent conduct ceased after the revolt of the 31st of May, when the Convention, its several committees, and especially that of General Security, fell under the yoke of the Committee of Public Safety, which acted the part of the Council of Ten and of the three inquisitors of the Venetian government. Its power was monstrous, because it was in a manner concealed—because it veiled its acts amidst the multitude of other committees—because, by renewing itself perpetually from among men of the same stamp, it took away the responsibility from its members, although its measures were ever the same. The committee concentrated itself at last in three of its members: Robespierre, who was the real chief, though half-concealed from view, and Couthon and St. Just. There was perfect unanimity among these three down to the moment of their fall; in proportion as the Mountain itself became divided, and its chiefs perished on the

scaffold, the alliance between the three became more firmly cemented. There is reason to believe that they had resolved to perpetuate their power by establishing a supreme council of three consuls, in which Robespierre would have had the perpetual presidency, with the departments of justice, exterior, and finance; Couthon that of the interior, and St. Just the war department." (*Histoire pittoresque de la Convention Nationale*, par un Ex-Conventional, 4 vols. 8vo. Paris, 1833.) The means by which these men contrived to maintain their usurped power are shown by Mignet in his 'History of the French Revolution.' Acting in the name of the National Convention, the Committee was in fact master of that assembly, which it compelled to adopt its reports and resolutions; it decreed the proscription of any member who resisted its will; it had at its command the armed multitudes of Paris and the suburbs, whose passions and fears it kept constantly excited by suspicions of royalists and traitors; it was supported by the numerous clubs and revolutionary committees distributed all over the country, the poorer members of which received by a decree of the Convention, extorted from that assembly on the 31st of May by the armed mob, an allowance of forty sols a day; and it sent commissioners to the armies, who impeached every general suspected of disaffection, and easily prevailed on the deluded soldiers to give him up. "It had at its command the law against the suspected passed by the Convention, by which it could arrest any citizen; the revolutionary tribunals which summarily sent the accused to the scaffold; and the decrees of confiscation, forced loans and requisitions, and the maximum upon provisions, by which it disposed of the property of all." This law of the maximum fixed the highest legal price of provisions and other necessaries, both for wholesale and retail dealers, and forbade them to ask more. (*Tableau du Maximum de la République Française décreté par la Convention Nationale le 6 Ventose, An II.*) The net was so widely spread that it took in all France; and a few obscure men exercised in the name of liberty a tyranny infinitely greater than that of the most arbitrary king of the old dynasty. In the Convention, from which nominally they derived their power, they were supported by a few bold men, who frightened the rest with the pikes of the mob and with threats of the scaffold. But when these men, Tallien, Barras, and others, discovered that they themselves stood in the way of Robespierre's ambition, and were destined to the common lot of the guillotine, they turned upon him and his friends of the Committee, and the majority of the Convention, which had through fear acquiesced in all their measures, immediately sided with them; the National Guards, weary of useless proscriptions, stood by their representatives, and Robespierre and his few friends found themselves alone, without any military man to support them. Even in the Committee of Public Safety, Collot d'Herbois and Billaud Varennes turned against Robespierre. On the 9th Thermidor, July 28, 1794, Robespierre, Couthon, and St. Just were executed. From that time the moderate party gradually, though slowly, acquired the ascendency in the Convention.

COMMITTEES. [PARLIAMENT.]

COMMODORE (*Comendador*), in the royal navy, is the officer commanding a small number of ships of war, when detached for any particular service from the fleet. His rank is immediately below that of a rear-admiral, and he is classed with a brigadier-general in the army. His ship is distinguished by a red pendant at the mast-head. The title is sometimes given to the senior captain in a fleet of merchant ships.

In the French service the commander of a detachment of ships is called *Chef d'Escadre;* and in the time of Louis XIII. the commander-general of the fleet was so called when he had not the rank of admiral.

The highest rank in the navy of the United States of North America is that of commodore, which is given to the commanders of squadrons at the six stations at which a naval force is maintained by the United States government.

COMMON LAW. In its most general signification the expression Common Law denotes the ordinary law of any country:

when used in this sense it is called *common*, as prevailing generally over a whole country, in contradistinction to *particular* laws, the operation of which is confined to a limited district or to a peculiar class of inhabitants. In England the Common Law is that body of customs, rules, and maxims which have acquired their binding power and the force of laws in consequence of long usage, recognised by judicial decision, and not by reason of statutes now extant. The common law is therefore called, in early periods of our legal history, the "lex et consuetudo Angliæ," and at the present day the appellation is used to denote "lex non scripta," in opposition to "leges scriptæ," or statutes. Sir Matthew Hale, in his 'History of the Common Law of England,' divides all the laws of England into two kinds, lex scripta, the written law, and lex non scripta, the unwritten law; and he adds, "although all the laws of this kingdom have some monuments or memorials thereof in writing, yet all of them have not their original in writing; for some of these laws have obtained their force by immemorial usage or custom, and such laws are properly called *leges non scriptæ*, or unwritten laws or customs" (chap. 1). He confines the term leges scriptæ, or written laws, in which he is followed by Blackstone, to statutes or acts of parliament; but this is not quite correct, for there are other rules, such as rules of court, made by the judges of the common-law courts, and orders in chancery, made by the judges in chancery pursuant to power given to them, which are laws, and "written laws," according to Hale's definition, for the "original" of them is in writing. The term unwritten law also is applicable to a great part of that kind of law called equity, for the original of it does not exist in writing. A large part of the law of equity is founded on judicial decisions made in conformity with some established principles, and therefore it resembles that part of the common law which is recognised as such by the decisions of common-law judges. In addition to customs and usages, whose particular origin is unknown, many portions of the common law consist of statutes passed before the time of legal memory, that is, the beginning of the reign of Richard I., which, though known historically to have been acts of parliament, have no authority as laws in that character, but derive their obligation from immemorial usage, recognised by judicial decision. The provisions of the common law are, however, quite as binding as acts of the legislature, for they have received the character of law by force of judicial decisions. In very early times it is probable that the system of rules which composed the common law was wholly traditional. In course of time the decisions of the king's ordinary courts of justice were recorded, and became the most authoritative evidence of such customs and maxims as formed part of the common law, according to the rule of the civil law, that what the emperor had once judicially determined was to serve as a guide in all like cases for the future. (Cod. 1, tit. 14-12.) In addition to the recorded judgments of courts, technically called precedents, the treatises of Bracton, Fleta, Britton, Staundforde's 'Pleas of the Crown,' and Coke's 'Commentary upon Littleton,' are acknowledged as evidence of what is Common Law. Of the whole system the judges of the superior courts are the expositors; they declare the law by applying certain established rules and principles to cases which come before them for judgment, but they have no power to add to or vary the law in any other way than by their decisions upon particular cases that are brought before them. Law made by judicial decision is called by Bentham *judge-made* law; a term which, as already intimated, belongs to a part of the law called equity, which is administered in the courts of chancery.

Learned writers have indulged in much speculation respecting the origin of the common law of England, though Sir Matthew Hale says it is "as undiscoverable as the head of the Nile." It seems, however, to be well ascertained that the customs which in ancient times were incorporated with it were of compound origin, and introduced at various times in consequence of the political vicissitudes of the country; some being Saxon, others Danish, and others Norman. It is also evident, from the adoption of the

Roman terms of art and many Roman provisions, that many of the rules and maxims of the common law were derived from the civil law. Bracton's work contains many passages which are taken directly from the 'Digest' and the 'Institutions' of Justinian. Again, many parts of the common law have gradually arisen from the necessary modification of its ancient doctrines and principles, in order to render them applicable to new states of society, produced by enlarged commerce and advancing civilization. From this cause some branches of our system of jurisprudence have wholly sprung into existence in modern times. Thus almost the whole of the law of evidence, now perhaps the most important part of our practical jurisprudence, has appeared as part of the common law since the time of the Commonwealth. But perhaps the most remarkable instance of the total change in common-law institutions with the progressive improvement of society is the trial by jury, which may be traced through all its gradations, from a rude kind of trial, in which the jury were merely witnesses called from the neighbourhood, in order that they might declare the truth to the judge, to the present system, where the jury themselves decide upon the truth of facts by the testimony of witnesses examined before them. On the other hand, many rules and provisions of the common law have wholly disappeared, having either become obsolete from disuse, or been gradually declared inoperative by decisions of the judges as they became inapplicable to the altered state of society. So great has been the alteration of the common law which these accessions and abstractions have occasioned, that it can scarcely be termed with propriety the same body of law that it was six hundred years ago, unless it be upon the principle upon which Sir M. Hale maintains its identity: that the changes have been only partial and successive, whilst the general system has been always the same, "as the Argonauts' ship was the same when it returned home as it was when it went out, though in that long voyage it had successive amendments, and scarce came back with any of its former materials.'

(Hale, *History of the Common Law;* Blackstone, *Commentaries*, vol. i. p. 63; Reeve, *History of English Law*, vol. i.; and Hallam, *Middle Ages*, vol. ii., 'On the Origin of the Common Law.')

COMMON PLEAS, COURT OF, a superior court of record, which has jurisdiction over England and Wales in all common pleas or civil actions commenced by man against man. It is at present composed of five judges, one of whom is chief justice and the other four are *puisne* justices. All are created by the king's letters patent.

This court has been stationary at Westminster Hall for several centuries. During the existence of the Aula or Curia Regis, established by the Conqueror in the hall of his usual residence, the palace at Westminster, that single tribunal had supreme jurisdiction in all temporal causes, which were adjudicated by the principal officers of the royal household, often assisted by persons learned in the law, called the king's justiciars. In this state of things, the poorer class of suitors in the common civil pleas, or actions between man and man in which neither the king's revenue nor his character of prosecutor of offences on behalf of the public were concerned, laboured under the inconvenience of either attending the frequent and distant progresses of the court, or of losing their remedies altogether. This evil, as well as the jealousy entertained by the crown of the ascendancy of the chief justiciar, who presided over the whole Aula Regis, occasioned the article in Magna Charta, that common pleas should not follow the king's court, but be held in some certain place. This court thereupon became gradually detached from the Aula Regis, and assumed its present separate form. It has ever since continued its sittings daily during the four terms of each year, without removal from the palace of Westminster or its immediate vicinity, except on a few occasions, in time of plague or contagious disease.

Before the passing of the statute of 3 & 4 Will. IV. c. 27, this court had an exclusive jurisdiction in all those actions which, as they concerned freeholds or realty, were called real, including as well those on which the common assurances of

fines and recoveries passed, as the others which were commenced by the king's original writ out of chancery. On this account it was styled by Coke the "lock and key of the common law." Since the abolition of real actions by the above-mentioned act (with three exceptions), dower and quare impedit are the only forms of action in which this court has exclusive jurisdiction; for in mixed and personal actions the King's Bench and Exchequer of Pleas have long exercised concurrent power. The Court of Common Pleas is a court of appeal from the decision of the revising barristers in the matter of disputed claims to vote for members of parliament. (6 Vict. c. 18, § 42.)

In the original constitution of this court, and down to the beginning of the reign of William IV., its proceedings in actions between persons not its officers were founded on original writs issued out of the Court of Chancery, though in process of time they did not actually issue except in cases where it became necessary to perfect the record. But now by a statute (2 Will. IV. c. 39) introduced by the late Lord Tenterden, to secure the uniformity of process in personal actions in the three superior courts of law, certain forms of process, called writs of summons and capias, are provided as the only means for commencing personal actions in any of those courts, and they may be issued from any of them.

Before 1830 the appeal from the judgments of this court was by writ of error to the justices of the King's Bench, a vestige of superiority in the Bench as the remnant of that Aula Regis from which this court as well as those of Chancery and Exchequer have been gradually detached. But now by 11 Geo. IV. & 1 Will. IV. c. 70, the judgments of this court can only be reviewed by the judges of the King's Bench and the barons of the Exchequer, who form a court of error in the Exchequer Chamber; the further appeal is by writ of error returnable in the Lords' House of Parliament.

[For an account of the privileges of sergeants-at-law in the Court of Common Pleas, see SERGEANT.]

COMMON, RIGHTS OF, in law, is the right of taking a *profit* in the land of another in *common* with others. It may either be such a right as is enjoyed in common with others to the exclusion of the owner of the land, or it may not exclude the owner of the land. The commoner has no interest in the soil of the land on which he has a right of common.

The profits which may be the subjects of common are the natural produce of land (or water, which is included in the legal signification of land); such as grass and herbage, turf, wood, and fish. The commons relating to these subjects are accordingly called common of pasture, turbary, estovers, and piscary. Other things which cannot be called products of land, but rather part of the land itself, as stones and minerals, may also be the subjects of common right. Rights of way and other accommodations in the land of another, though enjoyed in common by several persons, do not bear that name, but are called Easements.

Of all commons, that of pasture is the most frequent. It is the right of taking grass and herbage by the mouths of grazing animals. It differs from that property which may exist in the *vesture* or vegetable produce of the land, without any property in the land itself, and which is a corporeal hereditament; whereas all rights of common are incorporeal rights. The same remark applies to other rights of common, the subjects of which—as for instance woods and mines—may belong as corporeal hereditaments to one, while the land generally belongs to another.

Common of turbary is the right of taking *turf* for fuel; and common of estovers is the right of taking *wood* for fuel, and for the repairs of houses, fences, and implements of husbandry. These supplies of wood are called fire bote, house bote (which includes the former), plough bote, and hedge or hay bote. These estovers or botes may also be taken by every tenant for life or years from the land which he himself occupies, but in that case they are not subjects of *common* rights.

Common of piscary is the right of *fishery* in rivers not navigable; the right of fishing in the sea and in navigable

rivers is common to all persons in the realm.

The extent of rights of common depends very much upon the *title* to them. There are four titles on which such rights may be founded; common right (which seems to be nearly the same thing as the common law), prescription, custom, and grant (deed).

The title by common right arose with the creation of manors, when land was granted out in fee to be *held* of the grantor as *lord*. As such grants were forbidden by the statute "*quia emptores*" (18 Edw. I. c. 1), it follows that all commons appendant now existing must have been created before the date of that statute. The law allowed to every such grantee, as common right, common of pasture, turbary, estovers, and piscary in the *waste* of the lord, or that part of his lands which was neither taken by him into his *demesnes* or actual occupation, nor granted out by him to others. These implied rights of common, however, were allowed no further than necessity seemed to require, and rights of common thus originating are still confined nearly within their ancient limits. As they originated in grants of land, they were considered as inseparably *appendant* to the land, so that they could not be separated from the land without becoming extinct. Accordingly what is called Common Appendant is a right of common which a man enjoys in respect of his title to a piece of land. The right is appendant or attached to the land. The common of pasture was confined to the purpose of maintaining from seed-time to harvest the cattle of the commoner which were used by him in cultivating his land, and which that land would maintain through the winter, or which were, as the law styled it, *levant* and *couchant* upon it. Horses, oxen, kine, and sheep, used either for tilling or manuring land, were the *commonable* cattle. The land to which the common was appendant must have been originally arable, though the subsequent change of arable into meadow, &c. does not extinguish the right. Common of turbary appendant was confined to the purpose of supplying fuel for the domestic use of the tenant; and so strictly must this right be still confined within its ancient limits, that it must be appendant to an ancient messuage or house, and no more turves can be taken under it than will be spent in the house. Common of estovers appendant gives, as it gave originally, only the right of taking wood for the repair of ancient fences and houses. Common of piscary appendant was only for supplying the tenant's own table with fish, and it must be still limited to this purpose.

Common claimed by prescription (which supposes a grant) may be as various as grants may be. A right of common thus founded may be either annexed to land (when it is said to be appurtenant), or altogether independent of any property in land, when it is said to be *in gross*. Common in gross must be claimed either by prescription or by deed; and is not appendant or appurtenant to any certain land. If common of pasture, it may be for any kind of animals, whether commonable or not, as swine and geese. The number of animals may be fixed, or absolutely unlimited, and they need not be the commoner's own.

Common appurtenant may be severed from the land to which it was originally annexed, and then it becomes common in gross.

The title to common by custom is peculiar to copyholders and may also give the commoner various modifications of right.

Right of common of pasture may also be claimed because of *vicinage*, or neighbourhood. This is where two wastes belonging to different lords of manors adjoin each other without being separated by a fence. The cattle lawfully put upon the one common may then stray, or rather are excused for straying, into the other.

The rights of the owner of the soil over which a right of common exists, are all such rights as flow from ownership, and are not inconsistent with the commoner's rights.

Rights of common are conveyed, like all other incorporeal hereditaments, by deed of grant. When they are annexed to land, they will pass with the land by any conveyance which is adapted to transfer the land.

Rights of common are liable to be extinguished in several ways, and often contrary to the intentions of parties. It is a rule, that if the owner of common appurtenant purchase *any part* of the land over which the right extends, the right of common is *altogether* extinguished; it is the same if he release his right over any part of the land. This unreasonable rule, however, does not extend to common *appendant*, though that will be extinguished if the commoner becomes the owner of *all* the land in which he has common, and partial extinguishment of the common will follow from acquisition of part of the land. The enfranchisement of a copyhold to which a right of common is annexed extinguishes the right.

The most common mode of extinguishing rights of common in modern times is by inclosure under act of parliament. (INCLOSURE; also generally on this subject Woolrych, on 'Rights of Common;' Coke on Littleton, 122 a; Comyn's *Digest*, tit. 'Common;' and Blackstone's *Commentaries*, book ii. chap. 3.)

COMMONS. [INCLOSURE.]

COMMONS, HOUSE OF. The object of this article is to present a compendious view of the history and actual state of the House of Commons as a part of the Imperial Parliament of Great Britain and Ireland.

Long after the first signing of the great charter, the levying of *tallage* upon the burgesses, as upon the *villains*, was still claimed as an inherent right of the Anglo-Norman crown, and was of itself an abundant source of vexatious oppression. To show the galling nature of this exaction, we may instance the levy made by Henry II., on pretext of a crusade, in 1087, one of the last years of his reign:—He had a list made out of the richest citizens and burgesses of all the municipal towns, and had them individually summoned to appear before him at an appointed time and place. The honour of being admitted into the presence of the Conqueror's great grandson was in this manner granted to two hundred citizens of London, one hundred of York, and to a proportionate number in the other cities and boroughs. The letters of convocation admitted neither of excuse nor of delay. The burgesses thus summoned were received a certain number at a time, at several different days and places; and as each band presented themselves, it was notified to them, from the Norman king, through an interpreter, what sum he required from them. "And thus," says a contemporary historian (Roger de Hoveden, *Annales*), "did the king take from them a tenth of their properties, according to the estimate of good men and true, that knew what income they had, as likewise what goods and chattels. Such as he found refractory he sent forthwith to prison, and kept them there until they had payed the uttermost farthing. In like manner did he to the Jews within his realm, which brought him incalculable sums." This assimilation of the great mass of Anglo-Saxon burgesses to the Jews gives us the exact measure of their political condition at the commencement of the second century of the régime of the Conquest.

To the sagacity of Simon de Montfort, the great Earl or rather Count of Leicester, who led the national resistance to the tyranny of the weak and treacherous Henry III., the first general summoning of representative citizens and burgesses to parliament seems to be attributable, for it was in the year 1265, while Henry was a captive in De Montfort's power, after the battle of Lewes, that, in calling a parliament, he issued the earliest writs requiring each sheriff of a county to return, together with two knights for the shire under his jurisdiction, two citizens for each city, and two burgesses for each borough within its limits. Although the defeat and destruction of De Montfort, shortly after, by the exertions of Prince Edward, appear to have prevented this plan of representation to the commons from taking immediate effect, yet it was permanently adopted by Edward himself, at least from the twenty-third year of his reign, as an amelioration which, under the existing internal circumstances of the country, sound policy dictated.

It is plain, however, that in this measure, little was contemplated by Edward beyond the facilitating of the extraordinary supplies of money, indispensable for the prosecution of those schemes of

national aggrandizement which so actively and steadily occupied his vigorous reign. The advantage immediately derived to the burgess population from the substitution for the arbitrary and vexatious mode already described of summoning their deputies to the king's court for the purposes of taxation, of the uniform practice of calling them together at the same times and places at which the established estates of the Anglo-Norman parliament were convened, was, not so much the lightening of their pecuniary burdens on the whole, as the effecting and maintaining a more equal and regular distribution of them. The Anglo-Norman king and his great council, into which, among the laity, none but his immediate feudal tenants and a few summoned by his personal letters were yet admitted, still claimed and exercised the power of taxing the burgesses almost at discretion. Although the *knights of the shires*, at that period, that is, the representatives of the county freeholders at large, were first regularly summoned to attend on parliament at the same time as the representative burgesses, and, like them, for the purpose of taxation only, yet they and the burgesses were for some time longer regarded as forming two distinct representative bodies. Thus the writs for the parliament of the 23rd of Edward I. expressly direct that the elected citizens and burgesses shall have full power to act on behalf of the citizens and burgesses at large separately (*divisim*) from the county representatives, for transacting what shall be ordained by the great council (whose composition is above described) "in the premises," that is, in providing remedies for the dangers of the kingdom, as set forth in the preamble of the writ, sufficiently intimating that a "grant of supply," as it is now termed, was a primary object of this parliamentary convocation. And we find that while the county freeholders at large, as regards the rate of impost on their personal property, were placed on the same level as the tenants-in-chief, the citizens and burgesses were constantly called upon to give a full third more.

This very circumstance, however, the large proportion which they were made to bear of the burden which each great pecuniary exigency of the state imposed, inevitably accelerated their advance towards the attainment of a permanent control over all the great operations of government, by rendering their peaceable assent to the several impositions the more indispensable. The lasting establishment just described, of the practice of convoking them collectively, at the same places and times as the legislative estates of parliament, indicates the first great step in this progression. Arbitrary intimidation was no longer felt to be the best means of exacting through the town delegates the desired contributions. It was found expedient that they should at least hear the objects stated and discussed, to which the proceeds were to be applied. Their second step naturally was, to exercise a judgment on the wisdom and fitness, first, of the objects themselves, and next of the means by which they were to be prosecuted. So rapid was the march of the delegated body of citizens and burgesses in this career, that in the year 1297, the 25th of Edward I., we arrive at the first solemn recognition of their political existence in the *statutum de tallagio*, which has been commonly called *statutum de tallagio non concedendo*, by which the right of taxing them arbitrarily was finally relinquished. The statute declares—"No tallage or aid shall be taken or levied by us or our heirs in our realm without the good will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the land." At this date then we may fix that important step in the constitutional progression, the union of the representative freeholders or knights of the shire with the representative citizens and burgesses in one assembly.

In the great national measure of the year 1327, which closed the calamitous reign of the second Edward, we find them confounded together under the general name of *commons*, by whose "counsel and assent," as well as by that of "the prelates, earls, barons, and other great men" of the kingdom, it is stated in the writs issued to the sheriffs on that occasion by the young Edward to proclaim himself king, that his father had "removed him-

self" (that is, had been deposed), and he (the younger Edward) had taken upon him the government.

And according to the preamble of the statutes made at the first parliament of Edward III., the acts were passed "at the petition of the commons presented to the king in his council of parliament, by the assent of the prelates, earls, barons, and other great men." This form of *petitioning* the king in parliament, that is, in the baronial assembly or house of lords, was long the only mode possessed by the commons of introducing a measure sanctioned by themselves into that higher assembly, and remained a memorial of their first seemingly timid advances towards the complete legislative character, until, on their attainment of the latter station, they abandoned the term *petition* for the more business-like and less submissive one of *bill*. [BILL IN PARLIAMENT.]

In this very reign of Edward III., they proceeded so far as to claim an absolute veto upon all enactments affecting those great bodies of the people which they represented, by declaring to the king in parliament that they would not be compelled by any of his statutes or ordinances, *made without their assent*. Edward III. had too much general sagacity, and was too mindful of the popular concurrence in the revolution which had deposed his father, to seek to evade or oppose this legislative assent of the Commons.

It should be borne in mind that the original basis of the representation, in the time of Edward I., was very different from what we must suppose it would have been made, had the crown and its advisers at that period contemplated in this arrangement any such thing as the composition of a legislative assembly. The very large proportion of the whole number of its members that were sent from the towns, at a period when the population and general importance of the towns, as compared with those of the counties at large, were vastly less than they are now, was manifestly a circumstance repugnant to all the political notions and tendencies of the government of that day. Under Edward I. the town representatives bore so large a proportion to those of the shires as 246 to 74; and under Edward III. as 282 to 74. The reason why, on the first settling of the representative system into regularity and permanency, each constituency was uniformly summoned to elect *two*, members, without regard to its known or presumed proportion of wealth or populousness, seems to have been very simple and very natural. So long as the parliamentary voice of the commons was confined to matters of taxation merely, the only thing that appears to have been seriously regarded in fixing the number of delegates was the securing such a delegation from each constituency as at the smallest inconvenience and expense to it should have full power to treat of the pecuniary business in question; and *two*, being the smallest number compatible with the important conditions of mutual consultation and joint testimony, was fixed upon as the number that imposed the smallest burden on the constituents, and was also most convenient for avoiding a too crowded assemblage of representatives. And thus it seems to have been that the periodical and frequent shire and borough courts presenting the most natural and convenient modes and occasions of appointing the parliamentary deputies of the several communities, two representatives, and two only, were summoned, indifferently from the shire as from the borough, and from the largest shire or borough as from the smallest.

When the power and authority of the commons in parliament had become so firmly consolidated under the first three Edwards as to exercise an effective control over all the great measures of government, the composition of the representative body was an object of constant attention and solicitude to the crown. As the number and names of the counties entitled to send members admitted neither of doubt nor of dispute, the right of the *boroughs* became the first object of attack from that quarter. The attempts of this nature, made through the arbitrary exercise of the presumed power of the sheriff to select or omit boroughs, were defeated by parliamentary enactment of the 5th of Richard II.; and, in like manner, statutes were passed in the three following reigns

to restrain the corrupt and irregular proceedings of the sheriffs both in county and in borough elections.

Hitherto, however, the parliamentary determinations of the commons, as regarded the constitution of their own house, had constantly tended to maintain the political rights of their constituents against invasion on the part of the crown. But that firm and lasting establishment of their own power as a distinct legislative body, which may be dated from the great revolution that first brought the house of Lancaster to the throne, seems, by that very additional security which it gave them against royal encroachment, to have tended to embolden the house, not, as formerly, to maintain the elective franchise to the utmost with the same zeal with which they upheld their own interest and independence as a legislative chamber, but to commence a sort of reaction against the constituent bodies by narrowing the basis of the suffrage itself. The earliest of these disfranchising enactments, and one of the most remarkable, is that of the 8th Henry VI., which restricts the county franchise, formerly possessed by all freeholders, to such only whose freeholds were worth clear forty shillings a year, a sum at least equal to twenty pounds of the present day. The next remarkable instance, though very different in its nature, of legislative enactment respecting the constitution of the Commons' House, appears in the parliamentary incorporation of Wales and Cheshire in the reign of Henry VIII., which brought an accession of sixteen county and fifteen borough members.

The *borough* representation in general was still the great object of attention to the crown in undermining the independence of the House of Commons. This part of its policy was diligently pursued under the later reigns of the Tudors, and carried to the utmost limit by the Stuarts: 1st, by creating or reviving parliamentary boroughs, and at the same time remoulding their municipal constitutions according to the views of the crown; 2nd, by proceeding to assimilate the municipal constitutions of the old parliamentary boroughs to those of this newly created class. Of the 46 parliamentary boroughs first created in the reigns of Edward VI., Mary, and Elizabeth, no fewer than 27 appear in schedule A of the Reform Act of 1832, besides five of the same number which are in schedule B; a very clear indication as to the description of places which were chiefly selected at that period to exercise for the first time the parliamentary franchise. The last addition to the English representation, previous to the recent changes, was, under Charles II., the enfranchisement by statute of the county and city of Durham, and the creation by charter of the parliamentary borough of Newark. James I., by virtue of his royal prerogative, had already conferred the right of electing two members upon each of the two universities of Oxford and Cambridge, quite independently of the city and borough representation of those places already existing: thus introducing an anomaly, as well as novelty, into the representative system.

Those who conducted the revolution of 1688 made much more effectual provision against the return of Roman Catholic ascendency than they did for the purification of the representative system. The Bill of Rights does, indeed, express, "that the election of members of parliament ought to be free;" but this vague declaration seems to have amounted to nothing more than an indication of the prevailing public opinion on the subject. We find another strong proof that the public attention had now begun to be directed not merely, as in former times, to upholding the authority of the Commons' House as constituted in parliament, but to the nature of the relations, on the one hand, between the house and the constituent body of the nation, on the other between the several members and their individual constituencies, in the enacting of the statute commonly called "the Triennial Act," which deprived the crown of the power of continuing the same House of Commons for a longer period than three years. The Triennial Act of 6 & 7 William and Mary, c. 2, was an enactment wholly on the side of electoral freedom. The discretionary power previously exercised by the crown, not only of dissolving, but of continuing at pleasure, was highly favourable to any such view, on the part

of the crown, as that of forming a tacit compact with a corrupt or servile majority of the Commons' House, and was therefore, as had been lately seen under Charles II., exceedingly convenient both to king and commons, when the latter happened to be sufficiently pliant. So strongly, however, was the popular opinion on this point expressed at the period in question, that it compelled the commons to persist in the measure in spite of King William's refusal of assent to the bill after its first passing the two houses, so that on the second occasion his assent was reluctantly yielded. The same activity of the public opinion of that day respecting the composition of the commons, produced the several acts of that reign which disqualify various classes of placemen for seats in the house.

The legislative union with Scotland, effected in 1707 by statute 6 Anne, c. 8, brought an accession to the English (which thereby became the British) House of Commons, of thirty members for counties, and exactly half that number for cities and boroughs; exhibiting between the numerical amount of the county and that of the borough representation a proportion quite the reverse not only of that which existed in England, but of that which had previously appeared in the Scottish parliamentary representation.

The same reign presents us with an enactment of the British House of Commons respecting its own future constitution, totally different in character from those of William III.'s time just referred to. This is the very important act (9 Anne, c. 5) which established the qualification of landed property for English members, whether for counties or boroughs. In the reign of Henry VI., which gave birth to the enactment disfranchising the smaller county freeholders, was passed an act, in the same spirit, restricting the choice of those freeholders who still retained the franchise. The very terms of this statute imply, that in the case of the counties, as in that of the boroughs, there was originally no legal distinction between the qualification of the electors and that of the elected, but that the former were simply called upon to return two of their own number according to their own best discretion. The circumstance, too, of the daily expenses uniformly paid under legal obligation by the constituents to each representative while absent on parliamentary duty, may in this place be properly mentioned as a striking evidence of the fact, that the qualification of considerable property, how much soever it might be regarded in the judgment of the constituents, was originally not at all contemplated by the law. The statute in question (23 Henry VI. c. 14) declares, that thenceforward the county representatives shall be "notable knights of the same counties, or shall be able to be knights," that is, shall have freehold to the amount of 40*l.* per annum, and that no man shall be eligible "that stands in the degree of a yeoman or under." On this legal footing the county representation remained until the ninth year of Queen Anne, when not only was the landed property qualification re-enacted for the counties on a scale nearly proportioned to the decrease in the nominal value of money, but an unprecedented step was taken, by including in the very same clause of the same act a provision, that while every knight of the shire should possess a freehold or copyhold estate of clear 600*l.* per annum, so also every citizen, burgess, and baron of the Cinque Ports should have the like landed qualification to the amount of 300*l.* per annum. The statute of the 1st of George I., commonly called the Septennial Act, which extended the legal duration of parliaments from three years to seven, how cogent soever might be the political motives of the chief promoters of the measure, is another memorable instance of the lengths to which the House of Commons could now venture in dealing with the elective rights of its constituents.

After all that royal prerogative and parliamentary enactment had now done to undermine the originally free and independent basis of the national representation in general, little more seemed necessary in order to render the subversion of this part of the legislative constitution complete; and the door was permanently shut against the prosecu-

tion of any scheme for reforming or improving the constitution of the Commons' House, originating within the assembly. It would require volumes to describe the operation and effects of this great political machine during the period that followed —the period of its most absolute perversion to ministerial and to party purposes, and at the same time to trace the fearful and fluctuating conflict thus excited and protracted between the vitiated constitution of the house and the growing strength and intelligence of public opinion. It is no matter of conjecture; it is a momentous and significant fact in the history of this great political institution, that it was "the pressure from without," and that alone, forcibly stimulated, indeed, by the recent success of a popular revolution in France (July, 1830), that drove the House of Commons to compel, first, the formation of a ministry pledged to amend the constitution of the representative body in general, and secondly, by adopting and perseveringly supporting the measure of amelioration consequently brought forward, to force the acquiescence of the hereditary chamber of the legislature in this degree of purification of the representative.

One of the most important operations of the British House of Commons during the period above mentioned, was the enacting of the statute, passed in 1800 and taking effect from January 1st, 1801, by which it incorporated the parliamentary representation of Ireland with that of Great Britain. For the previous history of the Anglo-Irish representation, and the degree of alteration made in it by the Act of Union, we refer to PARLIAMENT OF IRELAND. Sixty-four members for counties, thirty-five for cities and boroughs, and one for Dublin university, were thus added to the number of the British House of Commons. In this instance, as in that of the Scottish union, the ancient proportion between the city and borough representation was reversed, and an additional weight consequently thrown into the scale of the county representation of the United Kingdom at large.

The following is a view of the present state of the representative system, with the alterations made by the Reform Acts of 1832: 2 Will. IV. c. 45, England; 2 & 3 Will. IV. c. 65, Scotland; 2 & 3 Will. IV. c. 88, Ireland:—

1. *As regards the number and local limits of constituencies, and the number of representatives.*

COUNTIES.

ENGLAND AND WALES.—The number of county constituencies before the Reform Act was 52, returning collectively 94 members: viz. two for each county of England, except Yorkshire; four for the latter county; and one for each county of Wales. The several cities and boroughs which are counties-corporate were excluded from the limits of the several shires within which they were locally situated: viz., from Carmarthenshire, the town of Carmarthen; from Kent, the city of Canterbury; from Cheshire, that of Chester; from Warwickshire, that of Coventry; from Gloucestershire, that of Gloucester; from Yorkshire, the town of Kingston-upon-Hull and the city of York; from Lincolnshire, the city of Lincoln; from Middlesex, London; from Northumberland, the town of Newcastle-upon-Tyne; from Dorsetshire, Poole; from Worcestershire, the city of Worcester; and from Hampshire, the town of Southampton.

The Reform Act increased the number of constituencies to 82, by dividing into two electoral districts each of the 25 counties in schedule F of the act: constituting each of the three ridings of Yorkshire a distinct district for the same purpose; and in like manner severing the Lindsey division of Lincolnshire from the other portion of that county, and the Isle of Wight from Hampshire. The number of county members was raised from 94 to 159, as follows:—Two are assigned to each division of each of the counties in schedule F and of Lincolnshire; two to each riding of Yorkshire: one member is added to each of the seven undivided counties included in schedule F 2 of the act; one to each of the three Welsh counties of Carmarthen, Denbigh, and Glamorgan; and one is assigned to the Isle of Wight, separately from Hampshire.

SCOTLAND.—The number (30) of county constituencies and of county members, as existing before the Reform Act, remains unaltered. But for two of the 27 counties which returned one member each, viz., Elgin and Ross, are substituted Bute and Caithness, which before sent only in alternate parliaments; and the remaining six counties, instead of electing alternately as before, now return jointly as follows:—Elgin and Nairn, one member; Ross and Cromarty, one; Clackmannan and Kinross, one. To the last-mentioned electoral district are also annexed three whole parishes, and part of two others, detached by the act from the shire of Perth, and one entire parish from that of Stirling. And, to obviate the inconvenience arising from the great irregularities in the boundaries of some of the Scottish counties, it is enacted that all detached portions of counties shall, for election purposes, be held to be in the several shires within which they are locally included.

IRELAND.—The Irish Reform Act of 1832 made no change in the county representation as to local limits or number of representatives; two members were still returned for each of the 32 counties.

CITIES AND BOROUGHS.

ENGLAND AND WALES.—The whole number of the cities and boroughs, or districts of boroughs, previously to the act, was 208, returning collectively 415 members. For total extinction as parliamentary boroughs, those were selected the population of each of which, according to the parliamentary returns of 1831, was below 2000. Within this description came the 56 English boroughs which returned collectively 111 members. For reduction from the sending of two representatives to that of one only, those were selected the population of which, according to the same census, was under 4000. These were the 30 English boroughs from whose proportion of the representation 30 members were deducted; to these must be added two members deducted from the four formerly sent by the united boroughs of Weymouth and Melcombe Regis; making altogether a total of 143 borough members struck out of the old frame of the representation.

Of the distribution of this number among the new constituencies of the United Kingdom (as the total number of members remains unaltered), we have here to speak only of the portion assigned to the populous parliamentary boroughs now created in England and Wales. To these was transferred the election of 63 members out of the 143 thus taken from the old constituencies. Of the 43 new boroughs, 22, containing each a population of 25,000 and upwards, and including the great metropolitan districts, were empowered to return two members each; and the remaining 21, containing each 12,000 inhabitants or upwards, to send one member.

New Boroughs created by the Reform Act, passed June 7, 1832.

Ashton-under-Lyne	(Lancash.)	1
Birmingham	(Warwickshire)	2
Blackburn	(Lancashire)	2
Bolton	(Do.)	2
Bradford	(Yorkshire)	2
Brighthelmstone	(Sussex)	2
Bury	(Lancashire)	1
Chatham	(Kent)	1
Cheltenham	(Gloucestershire)	1
Devonport	(Devon)	2
Dudley	(Worcestershire)	1
Finsbury	(Middlesex)	2
Frome	(Somerset)	1
Gateshead	(Durham)	1
Greenwich	(Kent)	2
Halifax	(Yorkshire)	2
Huddersfield	(Do.)	1
Kendal	(Westmorland)	1
Kidderminster	(Worcestershire)	1
Lambeth	(Surrey)	2
Leeds	(Yorkshire)	2
Macclesfield	(Cheshire)	2
Manchester	(Lancashire)	2
Marylebone	(Middlesex)	2
Merthyr Tydvil	(Glamorganshire)	1
Oldham	(Lancashire)	2
Rochdale	(Do.)	1
Salford	(Do.)	1
Sheffield	(Yorkshire)	2
South Shields	(Durham)	1
Stockport	(Cheshire)	2
Stoke-upon-Trent	(Staffordshire)	2
Stroud	(Gloucestershire)	2

Sunderland	(Durham)	2
Swansea, sharing with Aberavon, Kenfig, Loughor, and Neath: formerly contributory to Cardiff, now detached	(Glamorganshire)	1
Tower Hamlets	(Middlesex)	2
Tynemouth	(Northumberland)	1
Wakefield	(Yorkshire)	1
Walsall	(Staffordshire)	1
Warrington	(Lancashire)	1
Whitehaven	(Cumberland)	1
Whitby	(Yorkshire)	1
Wolverhampton	(Staffordshire)	2

Contributory Boroughs added by the Reform Act in Wales.

To Beaumaris—
Amlwch, Holyhead, Llangefrii } Anglesey

To Carmarthen—
Llanelly . Carmarthenshire

To Carnarvon—
Bangor . Carnarvonshire

To Denbigh—
Wrexham . Denbighshire

To Flint—
Holywell, Mold, St. Asaph } Flintshire

To Haverfordwest—
Fishguard, Narberth } Pembrokeshire

To Montgomery—
Llanfyllin, Llanidloes, Machynlleth, Newtown, Welsh Pool } Montgomeryshire

To Pembroke—
Milford . Pembrokeshire

To Radnor—
Presteigne . Radnorshire

In the important matter of *boundaries*, two great objects were to be attained; the fixing of appropriate limits to the boroughs of large population newly created, and the extending the limits of the old boroughs in the many instances in which a considerable population had, in the lapse of ages, accumulated without the ancient boundary. A large agricultural district was also annexed, for the purposes of parliamentary election, to each of the four boroughs of Aylesbury, Cricklade, East Retford, and New Shoreham. And as regards the Welsh districts of boroughs, it may be observed that the principle laid down in the act of Henry VIII., that *all* the boroughs in each county should share the representation—a principle which the arbitrary interference of the Crown, and the decisions of election committees, had since rendered in many instances inoperative—was now restored in its full vigour.

Scotland.—The number of town representatives was raised from 15 to 23; two instead of one being assigned to the city of Edinburgh; two to that of Glasgow; one to that of Aberdeen; one each to the towns of Dundee and Perth; and one each to the large modern towns of Greenock and Paisley. As regards the districts of burghs, their number, their general locality, and their proportion of members (one to each district), remain nearly as before; but as regards the particular places joined in the respective districts, various alterations were made by the Reform Act. Some towns were disfranchised, and others which had formerly been unrepresented were included. The great increase in the population of the maritime vicinity of Edinburgh has occasioned the creating of one district entirely new, comprising the three towns of Leith, Portobello, and Musselburgh, without, however, increasing the previous number of districts, the towns in the old arrangement being all distributed in the new. New and suitable parliamentary limits are assigned in the schedules of the act, as well to the several ancient boroughs as to those newly created.

Ireland.—In the list of cities and boroughs which sent representatives, no alteration was made by the Irish Reform Act; but two members each, instead of one, were assigned to Belfast, Galway, Limerick, and Waterford, thus raising the whole town representation from 35 members to 39. The limits of the parliamentary boroughs are defined, and to the greater number of them new limits are assigned by the Boundary Act.

UNIVERSITIES.

One member was added by the Irish Reform Act to the one previously returned by the University of Dublin.

2. *Elective Franchise.*

COUNTIES.

ENGLAND AND WALES.—Until the Reform Act, the parliamentary franchise in counties had remained without extension or alteration, as limited full three centuries before by the statutes of the 8th & 10th of Henry VI., the former of which confined the right to such "as had freehold land or tenement to the value of 40*s.* by the year at least, above all charges;" the latter to "people *dwelling and resident* within the county, &c., whereof every man shall have freehold to the value of 40*s.* by the year." In order to render a man a freeholder, and complete his qualification for voting, it was necessary not only that he should have a freehold interest in his lands and tenements, but that he should hold them by freehold tenure: consequently copyholders, holding by what is technically termed *base* tenure, as well as *termors*, having only a chattel interest in their estates, were excluded from voting. Doubts having been raised as to the right of copyholders, it was expressly enacted by the 31 Geo. II. c. 14, that no person holding by copy of court-roll should be thereby entitled to vote. The Reform Act extends the franchise by admitting not only copyholders, but leaseholders, and even occupiers, under certain limitations; and abridges in some cases of freeholds not of inheritance, as also in all cases of land situate in a city or borough, and which, being occupied by the proprietor, would give him a parliamentary vote for that city or borough. In establishing the right to the county franchise, questions of tenure and interest have become of comparatively little importance, except as they are connected with value; for now what is commonly, though improperly, called a tenant at will (that is, from year to year) occupying land of the annual rent of 50*l.* has a right to vote for a county, without reference to the tenure by which the lessor holds the land, or the interest that he may have in it. By 18 Geo. II. c. 18, § 5, it was enacted that no person should vote for a county until he had been for *twelve* calendar months in actual possession of the rents and profits to his own use, except in particular cases. But by the statute of 1832, by § 26 it is enacted that no person shall be registered as a freeholder or copyholder, unless he was in actual possession of the rents and profits for *six* months previous to the last day of July of the year wherein he claims to be registered. Leaseholders and their assignees, and yearly tenants, must have occupied for *twelve* months before the same period, except in the cases excepted by the above-mentioned statute of Geo. II. Value, therefore, has now become the criterion upon which, in many cases, the right of voting wholly depends; and in all cases it is a most material subject of inquiry, in order to determine in what character, whether as freeholder, copyholder, leaseholder, or occupier, an elector should make his claim to be registered.

1. If lands or tenements are held at a yearly rent of 50*l.*, bare occupation as tenant from year to year is sufficient to qualify; no further interest in the lands, &c. being necessary, and it being immaterial by what tenure they are held. 2. So also is the occupation of lands, &c. of 50*l.* yearly value, as sub-lessee or assignee of any under-lease, which lease was created originally for a term of not less than 20 years, how small a portion soever of the original term may remain unexpired. 3. The original lessee of a term created originally for 20 years, of lands of 50*l.* yearly value, or the assignee of such term, is entitled to vote in like manner, whether or not he is the occupier of such lands. 4. The occupier of lands of 10*l.* yearly value, as sub-lessee or assignee of any under-lease of a term of not less than 60 years. 5. So likewise the original lessee or the assignee of such a term of the lands of 10*l.* yearly value is entitled, whether occupying or not; nor is the nature of the tenure material in any of the above cases; but twelve months' possession previous to the last day of July of the year in which he claims to be re-

gistered is required in all. 6. The being seised of an estate—whether of inheritance or for a life of lives—whether freehold, copyhold, or of any other tenure, to the like yearly value of 10*l.*, entitles.

Freehold lands or tenements of 40*s.* yearly value, § 18, are still sufficient to give a vote in the four following cases:—

1. If it be an estate of inheritance. 2. If not an estate of inheritance, but only an estate for life or lives, if the elector was seised previously to the 7th of June, 1832 (the day on which the act received the royal assent), and continues so seised at the time of registration and of voting. 3. If acquired subsequently to that day, if the elector be in actual and *bonâ fide* occupation at the time of registration and of voting. 4. Or if acquired subsequently to that day, if it came to the elector by marriage, marriage settlement, devise, or promotion to any benefice or any office.

Of freehold or copyhold estates six months' possession, and of leasehold estates twelve months', is required, previously to the last day of July in the year of registration, except they come by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice or office.

Now, also, it has become material to consider how the lands or tenements are locally situated, §§ 24, 25: for if they are freehold within a city or borough, and in the freeholder's own occupation, so as to confer a right to vote for such city or borough—or if copyhold or leasehold, and occupied by him or any one else so as to give the right of voting for such city or borough to him or to any other person—they cease to qualify for a county vote.

However, by the 18th section of the act, an express reservation is made of all *existing* rights of suffrage possessed by county freeholders, provided they are duly registered according to the provisions of the act itself.

Scotland.—Under George II. enactments were made which rendered the proving of the old forty-shilling votes yet more difficult, so that many more of them disappeared, and at the close of the last century very few remained. Although the Scottish act of 1681 enacted that the right of voting should be in persons publicly infeoffed in property *or* superiority of lands of 40*s.* old extent, or of 400*l.* Scots valued rent, thus making a distinction, it should seem, between property and superiority, yet it was constantly interpreted to mean that superiors, that is, tenants-in-chief, or persons holding immediately of the crown, were *alone* entitled to vote. Thus proprietors of estates of whatever value, holding from a subject, were excluded from the franchise. It is computed that in several counties nearly one-half the lands were held in this manner, and in the whole kingdom one-fifth of the lands were so held. The class of landholders thus excluded comprised not only the middling and smaller gentry, and the industrious yeomen and farmers who had inherited or acquired some portion of landed property, but also some men of estates worth from 500*l.* to 2000*l.* per annum; while many persons, who had not the smallest actual interest in the land, possessed and exercised the elective franchise. When a person of great landed property wished to multiply the votes at his command, his course was to surrender his charter to the crown, to appoint a number of his confidential friends, to whom the crown parcelled out his estates in lots of 400*l.* Scots valued rent, and then to take charters from those friends for the real property, thus leaving them apparently the immediate tenants of the crown, and consequently all entitled to vote. This operation being open as well to peers as to great commoners, they availed themselves of it accordingly, thus depreciating or extinguishing the franchises of the smaller proprietors. This legal fraud began in the last century, and was chiefly practised subsequently to the accession of George III. Among the various modes by which it was performed, the most common were by life-rent charters, by charters on *wadset* or mortgage, and by charters in fee. The parliamentary representation of the Scottish counties therefore had, according to the expression of a learned lord, "complely slid from its basis." The total number of county voters, as compared with the number of persons directly

interested in the property of the soil, was extremely small, and of these the number of real votes scarcely exceeded that of the fictitious ones.

The new basis of county suffrage appears, by the Reform Act for Scotland, to be assimilated, as closely as the difference between the modes of possessing and occupying lands, &c. in the two countries will permit, to the system established for England and Wales. While the old class of rights to the suffrage are preserved to the individuals in actual possession of them before March 1, 1831, provision is made against their perpetuation; while the body of electors newly admitted consists of owners to the value of 10*l.* a year, —of leaseholders for 57 years or for life, whose clear yearly interest is not less than 10*l.*—of leaseholders for 19 years, where such yearly interest is worth not less than 50*l.*,—of yearly tenants whose rent is not less than 50*l.* per annum,—and of all tenants whatsoever who have paid for their interest in their holding an amount not less than 300*l.* The same difference is made as in the English act, between the freeholder and the mere occupier, as to the *six* months' proprietorship required in the former case and the *twelve* months' occupancy in the latter; and the like exceptions from this condition as to the length of possession in favour of cases wherein either ownership or lease comes to a person by inheritance, marriage, marriage settlement, "*mortis causâ* disposition," or appointment to any place or office.

Ireland.—The Act of Union made no alteration in the parliamentary suffrage of the Irish counties. The qualification of a freeholder remained the same as before, a clear annual forty-shilling interest for a life; and as it was customary in Ireland to grant leases on lives, freeholders were thus created whose votes, from their extreme poverty, and consequent inability to discharge their legal obligations to their landlord, were disposable by him as a matter of course. This practice of multiplying freeholds for election purposes merely was carried to an excessive and most mischievous extent, reducing the franchise almost to universal suffrage, among individuals who, by the very instrument by which they were professedly made free, were reduced to the most abject state of political bondage. Thus many of the counties, in choosing their representatives, lay under the absolute dictation of some great territorial proprietor; and there were few in which a coalition of two or three of the principal landowners would not determine the election according to their own wishes. Under these circumstances, the provision of the Catholic Emancipation Act of 1829, which raised the freehold qualification in the counties of Ireland from 40*s.* to 10*l.*, can hardly be regarded as a virtual disfranchisement.

The whole civil organization of Ireland having been introduced directly from England, and the system of tenures in particular being the same in both countries, the provisions of the Irish Reform Act which have reference to the territorial franchise are more strictly analogous to those of the act for England than those of the Scottish act could well be made, at least in appearance. The existing freehold rights being preserved here, as in the other two divisions of the empire, to their individual possessors, and the 10*l.* freehold franchise being already established by the above-mentioned provision of the act of 1829, the classes of electors newly created are—1, the 10*l.* copyholders; 2, lessees or assignees having a clear yearly interest of 10*l.* in a leasehold created originally for 60 years or upwards, or of 20*l.* in a leasehold of not less than 14 years, whether in their actual occupancy or not; 3, sub-lessees or assignees of any under-lease in either of the two cases just mentioned, actually occupying; 4, the immediate lessees or assignees, and they only, having a 10*l.* yearly interest in a 20*l.* lease, and actually occupying. The like provision is made as in the English act, against any title to the county franchise being derived from any holding whatever that would entitle to vote for a city or borough.

CITIES AND BOROUGHS.

England and Wales.—The want of any uniform basis of suffrage in the parliamentary boroughs, the endless diversity of the claims to its exercise derived from

the various political as well as local influences that had operated upon them in the course of ages,—a diversity which the numerous, various, and often conflicting decisions of election committees of the House of Commons had additionally complicated and confused—was one of the most grievous defects of the old representative system, The generally prevailing custom, too, that the non-residence of borough voters entailed no disqualification, was one of the most serious evils comprised under this head. The Reform Act prepared the way for sweeping off all the claims to the franchise founded on the old and long-abused titles to borough freedom, by establishing a uniform qualification, resting chiefly on the basis of inhabitancy.

It provides, § 27, that in every city or borough which shall return members, every male person of full age and not subject to any legal incapacity, who shall occupy, within such city or borough, or within any place sharing in elections with it, as owner or tenant, any house, warehouse, counting-house, shop, or other building, either separately or jointly with any land, of the clear yearly value of not less than 10*l.*, shall, if duly registered, as directed in another part of the act, be entitled to vote in the election of members for such city or borough; provided always, that no such person shall be so registered in any year, unless he shall have occupied such premises for twelve calendar months previous to the last day of July in that year; nor unless such person, where there shall be a rate for the relief of the poor, shall have been rated to all the rates for the relief of the poor made during such his occupation; nor unless such person shall have paid, on or before the 20th of July in the same year, all the poors' rates and assessed taxes due from him previously to the 6th of April preceding; provided also, that no such person shall be so registered unless he shall have resided for six calendar months previous to the last day of July in such year within the city or borough, or within the place sharing in the election, or within seven miles thereof. The premises in respect of the occupation of which any person shall be entitled to be registered as a voter, need not be always *the same* premises, § 28, but may be different premises occupied in *immediate* succession by such person during the twelve calendar months next previous to the last day of July in such year: such person having paid, on or before the 20th of July in such year, all the poors' rates and assessed taxes due before the 6th of April preceding, in respect of *all* such premises so occupied by him in succession.—Furthermore, § 29, when any premises in any such city or borough, or place sharing in the election, shall be *jointly* occupied by more persons than one, each of such joint occupiers shall be entitled to vote, in case the clear yearly value of such premises shall be of an amount which, when divided by the number of such occupiers, shall give a sum of not less than 10*l.* for each occupier. And, § 30, in every city, borough, or place sharing in election, it shall be lawful for any person occupying as above specified in any parish or township in which there shall be a rate for the relief of the poor, to claim to be rated; and upon such occupier so claiming, and actually paying or tendering the full amount of the rates, the overseers are to put the name of such occupier upon the rates; and in case such overseers shall neglect or refuse so to do, such occupier shall nevertheless be deemed to have been rated.

The formerly anomalous position of cities and towns which are counties of themselves, as regards the possession of the elective franchise, is rectified by the act, § 18. Such counties of cities and towns are now included, for the purposes of county elections, in the several counties at large, or divisions of counties, in which they are locally situated—with this restriction only as regards freeholds *for life;*—that no person shall be entitled to vote in the election of knights of the shire, or of members for any city or town a county of itself, in respect of any freehold whereof such person may be seised for his own life, or for the life of another, or for any lives, except such person shall be in the actual occupation, or except the same shall have come by marriage, marriage settlement, devise, or promotion to any benefice or to any office, or except the same shall be of the clear yearly value of not

less than 10*l.* It is further provided, § 31, that in every city or town being a county of itself, in the election for which freeholders or burgage tenants, either with or without any superadded qualification, now have a right to vote, every such freeholder or burgage tenant shall be entitled to vote, if duly registered; but no such person shall be so registered in respect of any freehold or burgage tenement, unless he shall have been in actual possession thereof, or in receipt of the rents and profits for his own use, for twelve calendar months previous to the last day of July (except where the same shall have come to him, within such twelve months, by descent, succession, marriage, marriage settlement, devise, or promotion to any benefice or office), nor unless he shall have resided for six calendar months previous to the last day of July within such city or town, or within seven miles of it; —the limits of such city or town a county of itself, being, for the purpose of this enactment, those settled by the general parliamentary Boundary Act for England and Wales. Similar provision as to length of occupancy, &c. was made in the case of persons having a previous freehold qualification to vote for any of the boroughs of Aylesbury, Cricklade, East Retford, or New Shoreham.

Such are the provisions which constitute what is popularly called, by reference to their most prominent feature, "the ten-pound householder qualification."

But as in the settling of the places which were thenceforward to elect, and in apportioning the members, the new act made a large compromise with the old system, so also it made no inconsiderable one, for a season at least, in sparing to a certain extent the rights to the parliamentary franchise grounded on the old titles to borough freedom. In all such cases, however, it imposes the very important condition of *residence.* It provides that every person who would have been entitled to vote in the election of members for any city or borough as a burgess or freeman, or in the city of London as a freeman and liveryman, shall be entitled to vote if duly registered; and that every other person having, previous to the act, a right to vote in the election for any city or borough by virtue of any other qualification than those already mentioned, shall retain such right so long as he shall be qualified as an elector according to the usages and customs of such city or borough, or any law in force at the passing of the act, and shall be entitled to vote if duly registered; but in both of the above cases it is enacted that no such person shall be so registered unless he shall, on the last day of July, be qualified in such manner as would entitle him then to vote if such day were the day of election; nor unless for six calendar months previous to that day he shall have resided within such city or borough, or within seven miles from the place where the poll shall heretofore have been taken, or, in the case of a contributory borough, within seven miles of such borough. As regards the second class of voters last mentioned, it is further enacted that every such person shall for ever cease to enjoy such right of voting if his name shall have been omitted for two successive years from the register of parliamentary voters for such city or borough, unless he shall have been so omitted in consequence of his having received parochial relief within twelve calendar months previous to the last day of July in any year, or of his absence on naval or military service.

The expedient to which, to serve party purposes during the agitation of the Reform measure, many of the governing bodies of corporations had resorted, of admitting unusually large numbers of freemen, occasioned the following limitations of the above reservation of the elective franchise of freemen to be introduced into the act, viz:—That no person who shall have been elected, made, or admitted a burgess or freeman since March 1, 1831, otherwise than in respect of birth or servitude, or who shall hereafter be so, shall be entitled to vote, § 32; that no person shall be entitled as a burgess or freeman in respect of birth, unless his right be originally derived from or through some person who was a burgess or freeman, or was entitled to be admitted as such, before the said 1st of March, 1831, or from some person who since that time shall have become, or shall hereafter become, a burgess or freeman

in respect of servitude, § 32; and that no person shall be entitled to vote for any city or borough (except it be a county of itself) in respect of any estate or interest in any burgage tenement or freehold which shall have been acquired by such person since the same 1st of March, 1831, unless it shall have come to such person previously to the passing of this act, by descent, succession, marriage, marriage-settlement, devise, or promotion to any benefice or office, § 35.

It is also provided in general that no person shall be entitled to be registered in any year as a voter for any city or borough who shall, within twelve calendar months previous to the last day of July in that year, have received parochial relief or other alms which, according to the previously existing law of parliament, disqualified from voting.

Scotland.—Owing to the previous absence of all pretence or shadow of popular suffrage in the Scottish boroughs, the revolution made in their parliamentary constituencies by the Reform Act of 1832 was effected simply, completely, and at once. The franchise is taken from the members of the town councils and their delegates, in whom as such it was before exclusively vested, and a 10*l.* qualification, by ownership or occupancy, substituted in its place, with the like conditions, as in the English act, of twelve months' previous occupancy, payment of assessed taxes, registration, and non-receipt of parochial relief.

Ireland.—In the Irish cities and boroughs the change immediately worked by the Parliamentary Reform Act was relatively greater than in England, owing chiefly to the fact that the municipal corporations of the former country existed in a state yet more thoroughly anomalous and corrupt than those of England. Here again, the actually existing and the inchoate titles to the parliamentary suffrage being reserved, as in the English act, on condition of residence within seven miles, and honorary freemen created since March 30, 1831, being excluded, the 10*l.* ownership or occupancy qualification is established as the new basis of suffrage, on condition of registration with *six* months' previous occupancy and payment of all rates due for more than one half-year. Reservation was also made, as in the English boroughs, of rights by freehold under 10*l.*, when accruing before the passing of the act, by descent, marriage, &c. The clause of the Catholic Emancipation Act, which raised the freehold qualification in counties at large to 10*l.*, left it at the old amount of 40*s.* in the several counties of cities and towns; but the Reform Act raised it there to the same scale as in the counties at large (only reserving for life the existing 40*s.* rights), and at the same time gave the parliamentary franchise for such corporate counties to the same classes of leaseholders, and on the same conditions, whom it admitted in the counties at large.

UNIVERSITIES.

In the two English universities the parliamentary suffrage is independent of residence, property, or occupancy, being vested in the doctors and masters of arts of Cambridge and Oxford respectively, so long as they keep their names on the boards of their respective colleges. In that of Dublin, in like manner, it is possessed by the fellows, scholars, and graduates of Trinity College, on the like condition.

The establishment of a general and uniform system of registration of voters, calculated to obviate much of the inconvenience of contested returns, is another very important feature of the Reform Acts; for the various and rather complicated details of which we must refer the reader to the acts themselves.

Having thus given a view of the qualifications for exercising the parliamentary franchise as now established throughout the British Islands, it remains to notice the principal of those legal disqualifications which are of a personal nature, and operate independently of all proprietorship or occupancy.

Every woman, of whatever age, and however independently situated as to property and social relations, is as much excluded from voting as from being elected. As to age in male persons, the only exception is that which excludes all minors, that is, all who have not com-

pleted their twenty-first year. As to the exception which regards *aliens*, this is not the place in which to examine the various difficulties that in many cases have arisen and still arise in strictly defining who are aliens and who are not. By the ancient "law of parliament," which forms an integral portion of the common law, lunatics are very reasonably incapacitated, as also are paupers in city or borough elections. It was resolved by the House of Commons in 1699 (14th December), that "no peer of parliament" has a right to vote for members of that house. After the Union with Ireland, this resolution, which was usually repeated at the beginning of every session, was altered into the following form: "That no peer of this realm, except such peer of that part of the United Kingdom called Ireland as shall for the time being be actually elected, and shall not have declined to serve, for any county, city, or borough of Great Britain, hath any right to give his vote in the election of any member to serve in parliament." The vast increase, since the commencement of the last century, owing to the establishment of so many new branches of revenue, in the number of persons employed immediately by the crown as revenue-collectors, occasioned the enactment of several statutes of exclusion from the parliamentary franchise. Thus the 22 George III. c. 41, excludes every class of officers concerned in the collection or management of the excise, customs, stamp duties, salt duties, window and house duties, or in any department of the business of the post-office. By 3 George IV. c. 56, § 14, it was first enacted that no justice, receiver, surveyor, or constable, appointed by that act at any one of the eight police-offices of the English metropolis, shall be capable of voting for Middlesex, Surrey, Westminster, or Southwark; and by 10 George IV. c. 44, which established the new system of police in certain districts of the metropolis (the operation of which has since been extended to meet the local extension of the police-system), it was enacted that no justice, receiver, or person belonging to the police-force appointed by virtue of that act, shall be capable of voting for Middlesex, Surrey, Hertfordshire, Essex, or Kent, or for any city or borough within the metropolitan district. By 2 Geo. II., c. 24, § 6, persons legally convicted of perjury or subornation of perjury, or of taking or asking any bribe, are thereby for ever incapacitated from voting.

As regards religious grounds of disqualification in general, it should be observed, that as no oaths are now required to be taken, nor declarations to be made, as preliminary either to registration or to voting, all such disabilities as might have arisen from refusal to take or make them are of course removed.

3. *Qualifications of Candidates.*

Of the close relation so long subsisting between the grounds of the elective franchise and of eligibility, and which had sprung from their original identity, we find distinct traces in the similarity between the heads of disqualification in either case. Women, minors, aliens, and lunatics are of course excluded in the latter case as well as in the former. It would be needless to remark, that peers of *parliament*, that is, actual members of the House of Lords, are ineligible to the House of Commons, except in order to point out this distinction—that any Irish peer, not being among the twenty-eight sitting in the House of Lords for the time being as representatives of the Irish peerage, and being, therefore, though a peer of the realm, not a peer of parliament, is eligible to represent any constituency in the United Kingdom, although such is not the case with Scotch peers who are not representative peers. No person concerned in the management of any duties or taxes created since 1692 (except commissioners of the treasury), nor any officer of the excise, customs, stamps, &c., nor any person holding any office under the crown created since 1705, is eligible. In like manner, pensioners under the crown during pleasure, or for a term of years, are wholly excluded. Any member, however, who accepts an office of profit under the crown existing prior to 1705, though he thereby vacates his seat, is capable of being re-elected. Contractors with government are ineligible; and it is enacted, that if any person so disqualified shall sit in the House, he shall

forfeit 500*l.* per day for so doing; and that if any person having a contract of this nature admits a member of the house to share in it, he shall forfeit 500*l.* to the prosecutor. Again, by 3 Geo. IV. c. 55, no police justice of the metropolis can sit in parliament.

The judges of the superior courts of common law are disqualified. The three vice-chancellors also are excluded, though the master of the rolls is not. The clergy are also excluded. [CLERGY.] Sheriffs of counties, and mayors and bailiffs of boroughs, as being themselves returning-officers in parliamentary elections, are ineligible for the several districts respectively for which it is their duty to make returns.

The repeal of the Corporation and Test Acts in 1828, and the passing of the Catholic Emancipation Act in 1829, have worked one very important alteration in the constitution of the Commons' House, by removing nearly altogether the widely operating religious disqualifications which previously existed. The engagement "on the true faith of a Christian," to abstain from all designs hostile to the church as by law established, which the latter act has substituted for the oath and declaration formerly required, excludes no man professing Christianity in however general terms, and seems indeed to have no effective operation but against individuals of the Jewish race and creed, to whose admission this bar is still opposed.

Such are the chief personal disqualifications, at common law and by statute, from sitting in the Commons' House of Parliament; presenting, as already remarked, a general analogy to those existing against the voter.

We now come to the other branch of the subject, the qualifications by property and residence; and here, in the case of the English and Irish representation at least, the analogy no longer holds good. The qualification for an English, Welsh, or Irish member, was not altered by the Reform Acts, and was—for a county member a clear estate of freehold or copyhold of 600*l.* a year, and for a city or borough member, 300*l.* To represent a university no property qualification is requisite. In 1838 an act was passed (2 Vict. c. 48), which amends the laws relating to the qualifications of members to serve in parliament: a knight of the shire must be entitled, for his own use and benefit, to real or personal property, or both together, to the amount of 600*l.*; and to be a citizen or burgess, only one-half the qualification is required. The only *personal* exceptions from this condition are in favour of the eldest sons of peers, of bishops having seats in the House of Lords, and of persons legally qualified to be county members. The qualifying property may be situated in any part of England, Wales, Ireland, or Berwick-upon-Tweed. As regards the Scottish part of the representation, it is worthy of especial remark, that the property qualifications enacted for England within a very few years after the union with Scotland, have never been extended to the latter portion of the kingdom; and that consequently the conditions of suffrage and of eligibility have remained there, according to the original constitution of the representative system in both countries, one and the same, excepting only the antiently essential condition of *residence*, which has long been done away throughout the United Kingdom without any reservation or limitation whatever; and excepting also that the Scottish Reform Act of 1832 has rendered unnecessary for county members the qualification of an *elector* formerly required.

Issuing of Writs for a General Election; Election Proceedings and Returns.

An essential and very important part of the representative machinery is that which regards the due transmission from the central to the local authority of the summons to elect, the superintendence of the election proceedings, and the due return from the local to the central authority of the names of the individuals chosen. When the lord chancellor, the highest officer of state, has received the written command of the king in council for the summoning of a new parliament, he thereupon sends his warrant or order to the highest ministerial officer acting under him, the clerk of the crown in chancery, to prepare and issue the *writs*,

or written authorities for that purpose, to the several sheriffs, whether of counties at large or of counties corporate.

In the early periods of our history, when the shire-motes, or county courts, were held regularly once a month, and the borough courts once a week or once a fortnight, there was no need to incur the trouble and inconvenience of a special meeting of the members of those courts, that is, of the freeholders in the former case and the burgesses in the latter, to elect the parliamentary representatives; and accordingly the sheriff was simply required to cause the election of the county members at the next county court, held in the regular course, or at an adjourned meeting of that court, in case such adjournment were necessary in order to allow time for giving due notice of the election. It was not until the importance of the county courts declined, that a different arrangement became necessary; nor was it until the 25 George III. that it was enacted that the sheriff, on receipt of the writ, should call a *special* county court for the purpose of the election.

The writ, thus addressed under the great seal to the sheriff of a county at large, requires him not only to cause the election of the county representatives, but also of those of each city and borough within his jurisdiction. And accordingly, on receiving this command, he issues a *precept* under his own seal to the head of each municipality enjoying the elective franchise, which precept is to be returned to him within a limited time, together with the name of the person or persons chosen;* in like manner as he himself is bound to return, before a certain day previous to that on which the parliament is summoned to assemble, to the clerk of the crown, from whom he received it, the writ, with the names of the persons chosen, whether as county or as borough members. Such, in brief, as regards the returning-officers and responsible conductors of elections, has been the system from the commencement of the general representation.

* In the universities, the vice-chancellor, as returning-officer, receives and returns the sheriff's precept of election.

In fourteen of the forty-three new and populous parliamentary boroughs created by the Reform Act for England and Wales, which had already a municipal or other chief civil officer or officers in whom this function could be appropriately vested, it is so intrusted by the Act. As regards the others, it is provided, that the sheriff of the respective counties shall, in the month of March in each year, by writing under his hand, to be delivered to the clerk of the peace for that county within a week from its date, and be by him filed with the records of his office, appoint for each of such boroughs a fit person resident therein to be the returning-officer until the nomination to be made in the March following. In case of such person's death or incapacity from sickness or any other sufficient impediment, the sheriff, on notice thereof, is forthwith to appoint in his stead a fit person, resident as aforesaid, to be the returning-officer for the remainder of the year. No person so nominated as returning-officer shall, after the expiration of his office, be compellable thereafter to serve again in the same office. Neither shall any person in holy orders, nor any churchwarden or overseer of the poor, be so appointed; nor shall any person so nominated be appointed a churchwarden or overseer during the time he shall be such returning-officer. Any person qualified to serve in parliament is exempted from such nomination as a returning-officer, if within one week after receiving notice of such appointment he make oath of his qualification before any justice, and forthwith notify the same to the sheriff. In accordance, however, with all previous usage, it is provided that "in case his Majesty shall be pleased to grant his royal charter of incorporation to any of the said boroughs named in the said schedules (C) and (D), which are not now incorporated, and shall by such charter give power to elect a mayor or other chief municipal officer for any such borough, then and in every such case such mayor or other chief municipal officer for the time being shall be the only returning-officer for such borough; and the provisions hereinbefore contained with regard to the nomination and appoint-

ment of a returning-officer for such borough shall thenceforth cease and determine."

The division of both counties and boroughs into convenient polling-districts, —the shortening of the time of polling in contested elections, from the old period of fifteen days to two days in England, Wales, and Scotland, and to five in Ireland,—the restriction of inquiry at the poll into the elector's right to the ascertaining the identity of name and qualification with those contained in the register of voters (thus abolishing the old tediously litigious practice of election scrutinies),—and the limitation of the necessary expense of election proceedings, borne by the candidates or their proposers—are among the more important of the recent improvements. For details, as we have already done in the case of the new system of registration, we must refer to the several Reform Acts of 1832.

Having thus given, we believe, a tolerably just though succinct view of the history and present state of the representative system of the British empire, so far as it can be distinctly shown without continual reference to the other branches of the legislature, we refer for an account of the organization and operations of the Commons, "in parliament assembled," to the article PARLIAMENT, IMPERIAL.

We have seen how the popular representation arose, first as a convenient, then as a necessary appendage to the feudal parliament of the Anglo-Normans. We have seen how, as early at least as the parliamentary settlement of the crown upon the house of Lancaster, that popular representation, under the title of the House of Commons, had become an effective, integral, independent, and solemnly recognised branch of the legislature. We have traced, from that period downwards, the twofold operation of the crown in undermining this equal and sometimes preponderating independence of the Commons' House, and of that House itself in contracting the limits and abridging the rights of the constituent bodies, until the original constitution of the representative body itself was absolutely subverted. And last of all we have seen that which, in the present day, it is most interesting to consider,—the reaction of an enlarged and enlightened public opinion on the legal constitution of the House. In an historical view it is far less important to examine the merits of the late measures of representative amelioration in detail, than to mark the maturity of a new political element which they indicate, and the new line of constitutional progression which they have begun. No matter that the Reform Acts, as they are called, have made but a compromise with the exceeding corruptions and anomalies of the old system, and have left some of its most important usurpations untouched; no matter that the Commons' House, which in the days of its pristine vigour was democratic in the fullest sense of the term, is still, though somewhat popularized by the recent changes, a highly aristocratic body; we do not the less find in these changes a successful effort of the national intelligence and will, not so much to replace the legislative representation on the basis on which it stood at the close of the fourteenth century, and which, from the causes we have previously stated, was fixed without any scientific or symmetrical proportioning even of the number of representatives to that of constituents, but to mould it into some shape more accordant with the present advanced state of general information in the great body of the people; to render it, in short, a popular representation in fact as well as in name. Towards this point, how much soever they have fallen short of it, the late alterations by parliamentary enactment distinctly tend. The spirit that predominates in them plainly shows from what quarter the impulse came to which they owe their being; and it is a reasonable, at least, if not a necessary inference, that nothing short of a retrogression of the public intelligence can prevent the impulse from being repeated until the great object we have stated shall be completely attained.

COMMONS, IRISH HOUSE OF. [PARLIAMENT OF IRELAND.]

COMPANIES, or GUILDS. [COLLEGIUM; GUILDS.]

COMPANIES, JOINT-STOCK. [JOINT-STOCK COMPANY.]

COMPANY. [CORPORATION; PARTNERSHIP.]

COMPURGA'TOR. A practice once prevailed, derived from the common law, of permitting persons accused of certain crimes to clear themselves by purgation. In these cases the accused party formally swore to his innocence, and, in corroboration of his oath, twelve other persons, who knew him, swore that they believed in their consciences that he stated the truth. These twelve persons were called compurgators. (Ducange, *ad vocem* "Juramentum.") This proceeding appears to have existed among the Saxons, and, in process of time, it came into use in England in civil cases of simple contract debts. The ceremony of canonical purgation of clerks-convict, which was nothing more than the formal oath of the party accused, and the oaths of his twelve compurgators, continued in England until it was abolished by the stat. 18 Eliz. c. 7. [BENEFIT OF CLERGY, p. 360.]

CONCEALMENT OF BIRTH. [INFANTICIDE.]

CONCLAVE. [CARDINAL; CATHOLIC CHURCH.]

CONCORDAT is the name given to a formal agreement between the see of Rome and any foreign government, by which the ecclesiastical discipline of the Roman Catholic clergy and the management of the churches and benefices within the territory of that government are regulated. It is, in fact, a diplomatic negotiation and treaty concerning ecclesiastical affairs, which includes also temporalities belonging to the church. The frequent disputes between the popes and the various states of Europe touching the right of appointing to vacant sees and benefices, and also about the claims of the see of Rome to part, or in some cases the whole, of the revenues of vacant sees and livings, and of the first-fruits and tenths of those which it had filled, as well as the immunities claimed in various times and countries by the clergy and supported by Rome, such as exemption from taxation, and from the jurisdiction of the secular courts, the right of asylum for criminals in the churches, and other similar claims; —all these have given occasion to concordats between the popes and particular states, in order to draw a line between the secular and ecclesiastical jurisdictions, and thus put an end to controversy and scandal.

By the concordat of 1516 between Leo X. and Francis I. the king abolished the right exercised by the chapters of electing the respective bishops, a right assured to them by St. Louis and by the states of the kingdom under Charles VII. in 1438. The parliament refused for two years to register this concordat, as contrary to the spirit of the general councils and the liberties of the Gallican church; it registered it at last March 19th, 1518, 'by express and repeated commands of the king.' (Gregoire, *Essai Historique sur les Libertés de l'Eglise Gallicane.*)

Concordats have become most frequent since the middle of the eighteenth century, an epoch from which the European governments have made themselves more independent of the ecclesiastical power, and the popes have been for the most part men of an enlightened and conciliatory spirit. Benedict XIV., by a concordat with the King of Sardinia, in 1741, gave up to the king the right of nomination to benefices in various provinces of the Sardinian kingdom, which the see of Rome had claimed till then, as well as the temporalities of the same during a vacancy. A concordat was made between the pope and Charles, King of Naples, about the same time, by which the property of the clergy became subject to taxation, and the episcopal jurisdiction in temporal matters was greatly limited. By another concordat between Clement XIV. and the King of Sardinia, the right of asylum to criminals in the churches was much restricted, and full power was given to the respective bishops to expel and give up to the secular power those who were guilty of heinous offences. But the most celebrated concordat is that agreed upon between Cardinal Consalvi, in the name of Pius VII., and the first consul Bonaparte, in July, 1801. By it the head of the state had the nomination to the vacant sees, but the pope was to confer canonical institution, and the bishops had the appointment to the parishes in their respective dioceses, subject however to the approbation of the government. The

clergy became subject in temporal matters to the civil power, just like laymen. All immunities, ecclesiastical courts, and jurisdictions, were abolished in France, and even the regulations of the public worship and religious ceremonies, and the pastoral addresses of the clergy, were placed under the control of the secular authorities. Most of these provisions remain in force in France to the present day. Regulations nearly similar exist in Austria and other German states. Other concordats have been made with some of the Italian states. By that of 1818 with Naples the king proposes the bishops, subject to the pope's scrutiny, and the pope consecrates them; the bishops have the right of censorship over the press, and the ecclesiastical courts are re-established for matters of discipline and for ecclesiastical causes as defined by the council of Trent. Appeals to Rome are allowed. It appears from the above facts, that the ecclesiastical authority and influence in Roman Catholic countries vary considerably according to the concordats, if there be any, entered into with Rome, or according to the civil regulations adopted and enforced by the respective governments towards the clergy as towards laymen.

CONCUBINAGE is the cohabitation of a man with a woman, to whom he is not united by marriage. Augustus, with the view of preventing celibacy and encouraging marriage, A.D. 9, caused the law called Lex Julia and Papia Poppæa to be passed, which may be considered as much an ordinance of moral police as a measure in favour of population. This law contained several conditions advantageous for those who had the greatest number of children. It also gave to concubinage (concubinatus) a legal character. The union of concubinage seems to have been commonly formed between a man and his liberated female slave. It appears that a man might have either another person's freedwoman or his own freedwoman as a concubine, or even a woman who was born free (ingenua); but they were chiefly taken from the class of persons of mean birth, or those who had been prostitutes. A man could not have a woman of honest life and conversation, a free-born woman, as a concubine, without some formal declaration of his intention. To cohabit with a free woman otherwise than in a matrimonial connection or that of concubinage, was a legal offence (stuprum). It appears that free-born women must have been sometimes had as concubines; for the Emperor Aurelian forbade such unions. By a constitution of Constantine a man could not keep a concubine while he was married. In Roman inscriptions we find instances of a woman raising a monument to her deceased companion, and calling herself his concubina. No female could be had as a concubine if she was under twelve years of age. Several instances are recorded of Roman emperors who, after the death of their wives, took a concubine instead of contracting a legal marriage; Vespasian, Antoninus Pius, and the philosopher Marcus Aurelius. The object of this union was, that the father might not beget children who would have the same rights as his children by his wife; for as concubinatus was not marriage, the children of such a union were not lawful children.

In Germany, among the reigning families, a left-handed marriage (Trauung an die linke hand or morganatische ehe) still sometimes occurs. This kind of marriage resembles the Roman concubinage, as well in its conditions as its consequences. (*Dig.* 25, tit. 5.)

CONFEDERATION OF THE RHINE. The Confederation of the Rhine was established by an act, signed at Paris on the 12th of July, 1806, by the Kings of Bavaria and Wirtemberg, the Elector of Mainz, the Elector of Baden, the Duke of Cleves and Berg (Murat), the Landgrave of Hesse-Darmstadt, the Princes of Nassau-Usingen, Nassau-Weilburg, Hohenzollern-Hechingen, Hohenzollern-Siegmaringen, Salm-Salm, Salm-Kyrburg; the Duke of Aremberg; the Princes of Isenburg, Birstein, Lichtenstein, and the Count of Leyen. By this act the Elector of Mainz received the title of the Prince Primate; the Elector of Baden, the Landgrave of Hesse-Darmstadt, and the Duke of Berg, received the titles of grand dukes, with royal rights and privileges; the Prince of Nassau-Usingen received the ducal, and the Count of Leyen the princely dignity. The French

Emperor declared himself Protector of the Confederation. By the establishment of this Confederation many towns and principalities lost their political existence: such were the imperial city of Nürnberg, which was given to Bavaria; and Frankfort, which was given to the prince primate. Several petty sovereign princes were by the same act mediatised, or deprived of their sovereign rights, such as making laws, concluding alliances, declaring war, coining money, &c.: they retained their hereditary estates, but became subjects to the sovereigns who were members of the Confederation. The object of the Confederation was declared to be, the maintenance of external and internal peace by the mutual assistance of all the members of the Confederation as well as of France, in case any one of them should be attacked by an enemy. The affairs of the Confederation were to be conducted by a congress sitting at Frankfort-on-the-Maine, and divided into two colleges—the royal one, in which the grand dukes had also their seats, and the princely one. The president of the congress in general, and of the royal college in particular, was the prince primate, but the president of the princely college was the Duke of Nassau. The Elector of Würzburg joined the Confederation in the same year, and the King of Prussia meditated the establishment, under his own protection, of a similar Confederation, composed of the princes of Northern Germany, in order to counterbalance the power of the Confederation of the Rhine. This project was destroyed by the war of 1806, which was not over when the Elector of Saxony, who had received the title of king, by his treaty with France, on the 11th of December, 1806, joined the Confederation, and his example was followed by all the Saxon princes. By the treaty of Warsaw, on the 13th of April, 1807, the two princes of Schwarzburg, the three ducal lines of Anhalt, the princes of Lippe-Dettmold and of Lippe-Schaumburg, and the princes of Reuss, were received members of the Confederation, which was increased by the accession of the newly erected kingdom of Westphalia, as well as that of both the Dukes of Mecklenburg, and of the Duke of Oldenburg. Thus in 1808 the Confederation comprehended 5916 geographical square (German) miles, with a population of 14,608,877 souls; the army of the Confederation, which was fixed in the beginning at 63,000, was increased to the number of 119,180. The act of the Confederation was violated by its protector himself, who united with France, by a decree of the 10th December, 1810, all the country situated between the mouths of the Schelde and the Elbe, and deprived many sovereign princes of their dominions, taking away from the Confederation of the Rhine an extent of 532 geographical square (German) miles, with a population of 1,133,057. Napoleon did not observe any better the promise which he gave at the establishment of the Confederation not to meddle with its internal affairs, but treated it in every respect as one of his provinces. The events of 1813 put an end to the Confederation of the Rhine; and the Congress of Vienna established, in 1815, the Germanic Confederation, composed of all the States of Germany. [GERMANIC CONFEDERATION.]

CONFERENCE at Hampton Court, was held on the 14th, 16th, and 18th of January, 1604, in the presence of King James I., who took a leading part in the discussion, between nineteen bishops and inferior clergymen of the Church of England, and four Presbyterian or Puritan divines, to argue certain objections to the doctrine and discipline of the Church, respecting which the Puritans had petitioned his Majesty. It was followed by no result.

CONFERENCE. [BILL IN PARLIAMENT, p. 367; PARLIAMENT.]

CONFISCATION. [FORFEITURE.]

CONFLICT OF LAWS. [INTERNATIONAL LAW.]

CONGE' D'ESLIRE, a term in Norman French, literally signifying 'leave to elect,' which is appropriated to the king's writ or licence to a dean and chapter to elect a bishop, at the time of the vacancy of the see. The right of nominating to bishoprics was in most countries of Europe enjoyed by the temporal princes, with little opposition from the ecclesiastical authorities, until the eleventh century, when a contest began

between the popes and the princes of Europe, which, in the next century, ended in the princes surrendering this power to the clergy. Father Paul (*Treatise of Benefices*, c. 24) says that between A.D. 1122 and A.D. 1145 it became a rule almost everywhere established, that bishops should be chosen by the chapter. In England, by the constitutions of Clarendon, A.D. 1164, the election was vested in the chapters, subject to the king's approbation of their choice. The right of election was afterwards surrendered to the chapters by a charter of King John, by which however he reserved to himself, among other things, the right of granting a congé d'eslire, and of confirming the choice of the chapter. This grant of freedom of election was expressly recognised in Magna Charta, and also by a subsequent statute, 25 Ed. III., stat. 6 (one of the statutes of præmunire), which was passed for the purpose of preventing the popes from interfering with the elections to dignities and benefices in England.

This was the law until the passing of 25 Henry VIII. c. 20, which was repealed in Edward the Sixth's reign. It is stated (Blackstone, *Comm.* i. 380, Note by Coleridge) "that the statute (of Hen. VIII.) is held to have been constructively revived and to be still in force, though it does not apply to the five bishoprics created by Henry VIII. subsequently to its passing; these are Bristol, Gloucester, Chester, Peterborough, and Oxford, which have always been pure donatives in form as well as substance." The authorities for this opinion are not given by Coleridge. This act of Henry VIII. provides that upon every avoidance of an archbishopric or bishopric the king may send to the dean and chapter a licence under the great seal to proceed to the election of a successor, and with the licence a letter missive containing the name of the person whom they are to elect. If the dean and chapter delay their election above twelve days after receiving the licence, the king may, by letters patent, nominate any person to the vacant see; if they delay the election beyond twenty days, or elect any other person than the candidate recommended by the king, or do anything else in contravention of the act, they incur the penalty of a præmunire. The ceremony of election is followed by confirmation, investiture, and consecration; after which the bishop sues to the king for his temporalities. Bishoprics in Ireland are donative by letters patent, without a congé d'eslire. (*Irish Stat.* 2 Eliz. c. 4.)

CONGRESS, an assembly of envoys delegated by different courts with powers to concert measures for their common good or to adjust their mutual concerns. The term is given also to a meeting of sovereign princes which is held for the like purpose. The delegates from the Assemblies of the British colonies who met at New York 7th October, 1765, to consider their grievances, called their assemblage a Congress. A second congress, which assembled in June, 1774, and sat for eight weeks, published a Declaration of Rights. Another congress met in May 1775, which proceeded to organize the military and financial resources of the colonies; and thus these assemblies of delegates exercised the functions of a supreme government, and under their authority the war of independence was brought to a successful termination. In 1789 the constitution was re-organized, and a congress of two houses was formed. [UNITED STATES, CONSTITUTION OF.] The meeting of envoys or plenipotentiaries which precedes a treaty of peace is sometimes called a Congress; but the term is more generally applied to such meetings when they have to settle, either before or after the peace, an extensive plan of political arrangements and re-organization. This was the business of the Congress of Vienna in 1815. Sometimes a meeting of sovereign princes or plenipotentiaries takes place to concert a certain line of political action, and this is also commonly termed a Congress. At the Congress of Carlsbad, held in August, 1819, measures were adopted by the ministers of Austria, Prussia, Bavaria, Hanover, Saxony, Würtemberg, Baden, Saxe-Weimar, Mecklenburg, and Nassau, touching the affairs of Germany and the question of granting constitutions to some of the German states. The Congress of Troppau, which met in December, 1820, and was afterwards adjourned to Laybach, was held to deli-

berate on the political condition of Naples, Spain, and Portugal. At the Congress of Verona, which sat from October to December in 1822, it was determined that French troops should march into Spain to restore to Ferdinand VII. his freedom of action, or, in other words, to put down constitutional principles. The Duke of Wellington was present at this congress, and through him the protest of the British Government against interfering with the internal politics of Spain was conveyed to the Congress.

CONSANGUINITY, or KIN, is the relation subsisting between persons who are of the same blood, or, in other terms, who are descended from the same stock or common ancestor. There can be no legal consanguinity without a legal marriage. [BASTARD.] Consanguinity is either *lineal* or *collateral*. Lineal consanguinity subsists between persons who are related to each other in the direct ascending line, as from son to father, grandfather, great-grandfather, &c.; or in the descending line from great-grandfather to grandfather, father, and son. Collateral kindred are those who, though they have the same blood, derived from a common ancestor, and are therefore *consanguinei*, do not descend one from the other. Thus brothers have the same blood and are descended from a common ancestor, but they are related to each other collaterally, and the children and descendants of each of them are all collateral kinsmen to each other. The Canon Law and the Roman Law have different methods of computing the degrees of collateral consanguinity. According to the Canon Law, which has been followed by the law of England, we begin at the common ancestor and reckon downwards to the persons whose degree of consanguinity we desire to ascertain, counting each generation as a degree: and the degree of consanguinity in which they stand to each other is the degree in which they stand to their common ancestor, if they are removed from the common ancestor by the same number of degrees; if they are not, their degree is that in which the more remote of them stands to the common ancestor. Thus (to use the example given by Sir William Blackstone), Titius and his brother are related in the first degree; for from the father to each of them is counted only one; but Titius and his nephew are related in the second degree, for the nephew is two degrees removed from the common ancestor, namely, his own grandfather, the father of Titius. On the other hand, in this supposed case, the Romans place Titius and his nephew in the third degree of consanguinity, for they count all the degrees from one given person upwards to the common ancestor, and downwards from that common ancestor to the person whose degree of relationship to the first person it is the object to establish. Thus they would count from Titius's nephew to his grandfather two degrees, and one more from the grandfather to Titius. By the law of England, all persons related to each other by consanguinity or affinity, nearer than the fourth degree of the Roman law, are prohibited from marrying, excepting in the ascending or descending line (in which the case is hardly possible by the course of nature); and by statute 5 & 6 Will. IV. c. 54, sec. 2, it is enacted, "that all marriages celebrated after the date of that act between persons within the prohibited degrees of affinity or consanguinity, shall be absolutely null and void to all intents and purposes whatsoever." [AFFINITY.] Under the statute of distributions, 22 & 23 Car. II. c. 10, in making the distribution of an intestate's personal estate among the next of kin, the computation of degrees of kindred is according to the Roman law, which has probably been adopted in this case, because the other provisions of the statute are mainly taken from the Roman law. In England real estate descends to the next heir, and the descent is regulated by the general doctrine of consanguinity of the Common Law and the statute of 3 & 4 Will. IV. c. 106. (*Novell.*, 118; Blackstone's *Essay on Collateral Consanguinity*, and Blackstone's *Commentaries*, vol. ii. p. 202.)

The question of consanguinity is the question of relationship between two given persons, as explained above. If one of these persons is called [A] all his lineal ancestors will be found in (*a*) in

the ascending line above him, and all his lineal descendants in the descending line below him. His collateral relations will be found in the parallel lines (*b*), (*c*), (*d*), &c. The Roman numerals denote the respective degrees of consanguinity in the Canon, and the Arabic those in the Roman Law. Thus, III. in the ascending line is A's great grandfather, and III. in the descending line his great grandson. In the ascending and descending lines the computation of the Roman and canon laws, as already explained, is the same: in both laws the great grandfather and great grandson are respectively in the third degree from A. No. III. in line (*b*) is A's great uncle, who, according to the mode of reckoning already explained, is in the third degree of consanguinity to A by the canon law; and in the fourth, as denoted by the Arabic numeral 4, placed under III., by the civil or Roman law.

The following are the names for consanguinity in the Roman law. In line (*a*) ascending from A: 1, pater, mater; 2, avus, avia; 3, proavus, proavia; 4, abavus, abavia; 5, atavus, atavia; 6, tritavus, tritavia: all above 6 are included in the general name "majores." In line (*a*) descending from A:—1, filius, filia; 2, nepos, neptis; 3, pronepos, proneptis; 4, abnepos, abneptis; 5, atnepos, atneptis; 6, trinepos, trineptis: all below 6 are included in the general name of "posteri" or "posteriores."

In line (*b*), beginning with 2 and ascending:—2, frater, soror; 3, patruus, amita (uncle and aunt on the father's side); avunculus, matertera (do. on the mother's); 4, patruus magnus, amita magna, avunculus magnus, matertera magna; 5, propatruus, proamita, proavunculus, promatertera; 6, abpatruus, abamita, abavunculus, abmatertera.

In line (*b*), beginning with 3 and doscending, the names are, 3, fratris, sororis, filius et filia, and so on.

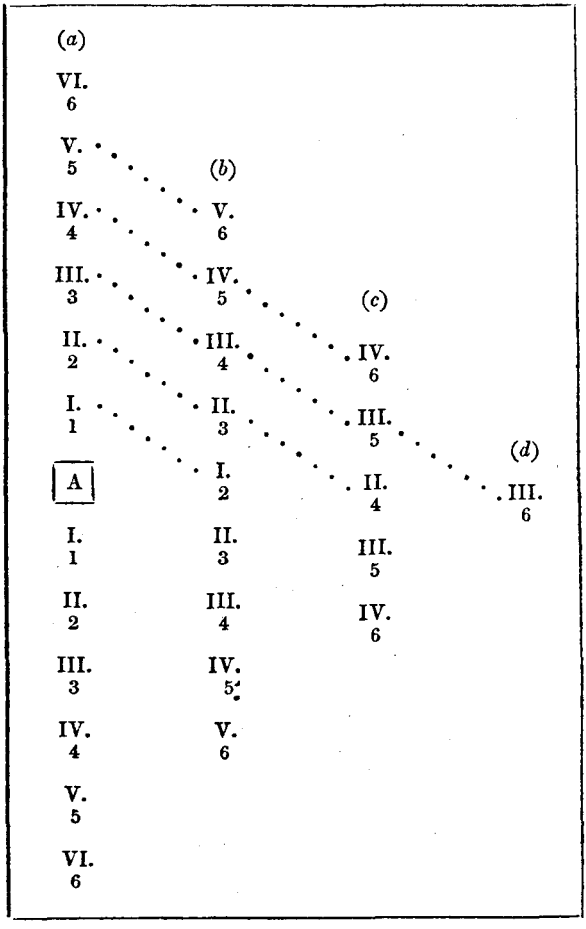
In (*c*), beginning with 4 and ascending:—4, consobrinus, consobrina, which are the general terms, but properly signify those born of two sisters (quasi consororini); sons born of two brothers are properly called fratres patrueles; daughters, sorores patrueles. 5, proprior, or prior sobrino, proprior sobrina, the sons and daughters of the patruus magnus, amita magna, &c. (Tacit., *Annal.* xii. 64.)

Some of the Latin writers used "nepos" to express a brother's or sister's son.

The term consanguinity is derived from the Romans; but among the Romans, Consanguinei were properly only those who had a common father. Cognatio was a larger term, and it was divided into naturalis and civilis. Naturalis cognatio was that which existed without civilis cognatio, that is, without reference to marriage. Accordingly naturalis cognatio existed among all persons who were merely of kin through the mother, whether they were the offspring of a marriage or not. Naturalis cognatio, or the natural propagation of the species, was the element upon which the civilis or legal cognatio was formed. But civilis cognatio might exist without the naturalis, as in the case of adoption. When cognatio resulted from a legal marriage, there was both the naturalis and civilis cognatio combined. The naturalis cognatio was simply called cognatio; the civilis cognatio might be called civilis cognatio, but its proper name was agnatio. All those between whom cognatio existed were Cognati: all those between whom agnatio existed were Agnati. Cognati then were all those who were connected either by father or mother, or both, whether they were agnati also, or were merely connected by the naturalis cognatio. Those only were agnati who were in the power of a father of a family; and among them was the wife, who was in the hand (manus) of her husband; and they were still agnati after his death. They ceased to be agnati if they were adopted into another family. Also those who were adopted into a family became agnati to all who belonged to such families. Accordingly the definition of agnati, which defines it to be those cognati who are related through males, that is, by being begotten by a man in lawful marriage, is not quite exact; for the definition does not comprise those who are adopted into a familia, though by such adoption they became agnati; and it does comprise those who are adopted out of the family, and who thereby cease to

be agnati to the members of the family which they have left. In the old Roman law it was only agnatio, that is, civilis cognatio, which was a matter of legal consideration; but under the empire the strict nature of agnatio lost its meaning, and cognatio also was regarded, as we see in the case of succession to intestates. Thus those agnati who had lost their rights to the succession under the old law in consequence of a capitis diminutio were admitted by the prætorium jus to the succession of intestates, for they were cognati, though they had ceased to be agnati. The same equity of mutual succession was extended to a mother and her children when the mother had not been in the hand of her husband, and consequently the legal consanguinity between her and her children was wanting. (Gaius, iii. 24, &c.)

(*Institut.*, iii. tit. 6, *De Grad. Cognationum; Dig.*, 38, tit. 10; Ulpian, *Frag.*, tit. 26; Böcking, *Institutionen*, i. 253.)



CONSCIENCE, COURTS OF. [REQUESTS, COURTS OF.]

CONSCRIPTION is the name given to the mode of recruiting the French army under the Republic and the Empire. Under the old French kingdom the army was recruited chiefly by voluntary enlistment, and the soldiers were taken mostly from the peasantry, by whom the change from the condition of a daily labourer to that of a soldier was considered as an improvement. The officers were appointed from among the higher or educated classes. When the revolution commenced, the old army was broken up, the whole nation was called to arms, and volunteers were found in abundance. But as the soldiers were bound by no permanent obligation, a system of requisition was enforced, by which every district was bound to furnish a certain number of men for the regular army. But even this proved insufficient, and the Executive Directory found itself in want of soldiers to supply the numerous armies on the frontiers. In 1798 General Jourdan presented to the Council of Five Hundred a project of a law for a new mode of recruiting, under the name of Conscription. This project was approved by the legislature, and passed into a law 5th of September, 1798. After setting down as a principle that every Frenchman is bound to defend his country when in danger, the law went on to say, that independently of danger to the country, every Frenchman from the age of twenty to twenty-five is liable to be called out to serve in the regular army. Every year lists were made in every department of the young men of the age above stated, divided into five classes, the first being those between twenty and twenty-one years; the second from twenty-one to twenty-two; and so forth. The number of men required for that year being made known by the government, and voted by the legislature, a distribution was made among the departments and districts of the quota which each was to furnish. The number required was then taken by lot from the first or junior class, and when that was exhausted, from the second, and so on. This operation was repeated every year. The first levy by conscription in 1799 was 200,000 men. Bonaparte, when first consul, found the system already established, and he applied himself strenuously to render it more effective and to carry it to the utmost extent. At the beginning of 1802 a levy was made of 120,000 conscripts, 60,000 of whom were to fill up vacancies in the army on the peace establishment, and the other 60,000 to form a reserve in case of war. In April, 1803, 120,000 more conscripts were levied out of the conscription lists for the years XI. and XII. In October of the same year 60,000 more were levied out of the lists of the year XIII. By an arrêté 19 Vendemiaire, year XII. (12 October, 1803), severe penalties were enacted against refractory conscripts, that is, those who had not joined their regiments. Eleven dépôts in various citadels were marked out for them, where they were to be kept under arrest, and work at the fortifications. They were also condemned to a fine, payable by their relations. In January, 1804, 60,000 men of the list of the year XIV. were levied. On this occasion Bonaparte said to the Council of State that the law of the conscription was the dread and desolation of families, but that it formed the security of the state. (Thibaudeau, tome v. p. 319.) In 1805, just before the war of Austerlitz, a Senatus Consultum ordered a levy of 80,000 men. Till then the levies had been voted by the legislative body, but henceforth a Senatus Consultum was deemed sufficient.

In December, 1806, a levy was ordered of 80,000 men; in 1808, 80,000, besides 80,000 more of the conscription lists of 1810, to be called out in 1809. This was on account of the Spanish war, which the senate said was "politic, just, and necessary." Instead of men of twenty years complete, according to the original law, the young men now taken were not nineteen. In 1809 a new Senatus Consultum, 18th April, ordered a levy of 40,000; and on the 5th October, another of 36,000. In 1810 there was a levy of 120,000 of the lists of 1811, besides 40,000 conscripts of the maritime departments for the service of the navy. In 1811 the levy was 120,000 conscripts, besides those levied in Tuscany, the Roman states, Holland,

and the Hanseatic towns recently annexed to the empire. As the levies increased, the repugnance of young men to the service became greater, and the severity of the government against refractory conscripts increased in proportion. A reward of twenty-five francs was given for seizing one. When there was a considerable number of refractory conscripts in a department, a moveable column was formed to hunt after them, and the soldiers were quartered in the houses of the relations of the fugitives, who were obliged to board them.

The disasters of the Russian campaign occasioned new expedients for raising men besides the regular conscription. Half a million of men was voted by the senate towards the end of 1812, consisting of 150,000 conscripts of 1813, 150,000 of 1814, 100,000 out of the lists of 1809, 1810, 1811, and 1812, who had not been included in the former levies, and 100,000 men of the first ban of the National Guard, who were formed into regiments of the line.

In November, 1813, another Senatus Consultum placed at the disposal of the emperor 350,000 more conscripts of the lists of 1813-14, who had not been included in the previous levies; and by a decree, 17th December of the same year, 180,000 men, taken chiefly from the National Guards, were ordered for the defence of the towns, as the allies threatened the French territory; and yet, notwithstanding these enormous calls, Napoleon, in 1814, had hardly 150,000 regular troops to oppose to the allies.

Besides the above conscriptions of the French empire, the kingdom of Italy furnished the following numbers:—in 1805, 6000; January, 1807, 9000; October, 1807, 10,000; 1808, 12,000; 1810, 11,000; January, 1811, 15,000; November, 1811, 15,000; 1812, 15,000; February, 1813, 15,000; October, 1813, 15,000.

Few soldiers, unless disabled by infirmities or wounds, ever got their discharge under Napoleon. The time of service was unlimited. By art. 11 of the Charte of 1830, the conscription was abolished, and a new law was promised respecting the recruitment of the army and navy. This law was promulgated 21st March, 1832, and it declares that the army is to be recruited only by voluntary engagements and by the 'appel,' which term signifies a choice by the drawing of lots amongst the young men of each canton who have completed their twentieth year during the year preceding. The following persons are exempt from the 'appel:' any orphan with younger brothers or sisters—an only son or grandson, and the oldest son or grandson of a widow or blind father, or of a father above sixty—but if the eldest son or grandson in either of the last-mentioned cases is blind or infirm, the youngest is exempted. There are also some other exemptions, as persons engaged in public instruction, or who are preparing for the church or the ministry in any religious denomination which is paid by the State, also students who have obtained certain prizes. There is an appeal to a council of revision for those who conceive that they ought to have been exempted. The period of service is seven years. Persons who have drawn lots which render them liable to serve may obtain a substitute, who must be above twenty and not above thirty years of age, or thirty-five if he has already served in the army, or between eighteen and thirty if the brother of a person liable. Substitutes must not be married, or widowers with children. A person under the age of thirty cannot be admitted to any civil or military office unless he has fulfilled the obligations of the law of 21st March, 1832. Napoleon admitted in principle the procuring of substitutes, and even defended it in the Council of State, as necessary "in the present state of society, which was very different from that of Sparta or Rome;" but he afterwards surrounded it with so many difficulties, that substitutes became extremely scarce and expensive.

In Prussia all men able to bear arms from twenty to twenty-five belong to the standing army: they serve three years, and are then discharged for two years, during which they are liable to be called out as the reserve. All those who have served in the standing army belong to the landwehr of the first ban, from the age of twenty-six to thirty-two inclusive. This

ban, in time of war, is liable to serve abroad as well as at home. It is called out every year to exercise. The second ban is called out only in time of war, and includes all men capable of bearing arms till the age of thirty-nine. All older men fit for service belong to the landsturm. For an account of the Prussian military system see Laing's 'Notes of a Traveller.' [MILITIA.]

CONSERVATORS OF THE PEACE, before the comparatively modern institution of justices of the peace, were officers who by the common law of England were appointed for the preservation of the public peace. These conservators, whose powers were far inferior to those of modern justices of the peace, consisting almost entirely of the authority to take sureties for the peace and for good behaviour, were of several kinds. In the first place, certain high functionaries were general conservators by virtue of their offices. Thus the king, the lord chancellor or lord keeper, the judges of the Court of King's Bench, and the master of the rolls, were intrusted by the common law with the general conservancy of the peace throughout the realm, as incidental to their several offices. Other officers again were conservators only in special places; thus the judges of the common pleas and barons of the exchequer were conservators of the peace only within the precincts of their several courts. In like manner, judges of assize and jail delivery within the places limited by their commissions; coroners and sheriffs within their several counties; the steward of the Marshalsea within the verge of the king's household; and constables and tithingmen within their hundreds or tithings, were all conservators of the peace at common law; and all the officers above enumerated retain their authority at the present day. But besides these official conservators there were others who were expressly intrusted with the charge of the peace, either by prescription, election, or tenure. Thus it is said that the owner of a manor might have prescribed that he and his ancestors, whose estate he had, were entitled to be conservators of the peace within such manor. So also as sheriffs were formerly elected, and as coroners still are elected, by the freeholders of the county, certain persons were, before the reign of Edward III., elected conservators of the peace in different counties. There were also instances in which lands were granted by the king to hold of him by knight's service, and also by discharging the duties of conservation of the peace within the county where the lands lie. Besides these, there were conservators of the peace appointed by letters-patent from the Crown, in cases of emergency, to defend particular districts, where breaches of the peace were apprehended in consequence of foreign invasion or intestine tumult. All the different kinds of conservators of the peace above noticed, excepting those who have the duty cast upon them as incidental to other offices, were entirely superseded upon the establishment of the system of justices of the peace, in the early part of the reign of Edward III. [JUSTICES OF THE PEACE.] (See also full details upon this subject in Lambard's *Eirenarcha*, book i., c. 3.)

CONSERVATOR OF THE STAPLE, in the law of Scotland, an officer in the nature of a foreign consul, resident at Campvere, in the Netherlands. By the act 1503, c. 81, passed, as the preamble states, for the welfare of merchandise, and to provide remedy for the exorbitant expense of pleas in foreign courts, the conservator of Scotland was vested with a jurisdiction to do justice between merchant and merchant in the parts beyond sea, such merchants being the king's lieges, and the conservator exercising his jurisdiction by advice of at the least four merchants, his assessors; and it was further provided by the act, that no Scotch merchant sue another before any other judge beyond sea, nor do in the contrary of the statute, under the penalty set down therein. By subsequent acts he was empowered to put the usury laws and other like laws in execution among the same merchants; so that the conservator might be regarded as a commercial judge, with a civil and criminal jurisdiction over native Scotsmen beyond the realm.

From the chapter immediately following that first above cited, wherein the conservator is required to come yearly home, or send a procurator for him, to answer

all matters laid to his charge, we might suppose that appeal lay from him only to the king and council. But since the erection of the Court of Session, in 1532, he has been regarded as an inferior judge, and his court as an inferior court, which it is accordingly considered by Erskine in his 'Institutes,' b. i. tit. 4, sec. 32. In the case of Hoy *v.* Tenant, June 27, 1760, the Court of Session went still further, and held itself as the *forum originis* of all Scotsmen, to have a cumulative jurisdiction with the conservator.

CONSIDERATION. This is a Latin word, "consideratio," which, as well as the verb "considero," was used by Cicero and others to express "careful observation," or "reflection," or "deliberation before action." It has nothing to do with looking at the stars, as the Latin grammarian Festus states; but it implies something which is nearer to the business of common life than star-gazing: it implies the sitting down of a man in a place alone or with others. The word "consideration" means 'deliberation' in the English language of common life.

But consideration has also a legal and technical meaning, which seems to flow naturally from its primary and vulgar meaning. A consideration is something which enters into all contracts, and is a part of all transfers of property, except they are made by will or testament. The following are examples of *expressed* considerations, from which examples the technical meaning of consideration may be collected:—If a man agrees to sell his land to another for 100*l.*, the 100*l.* is the consideration for which he agrees to part with his land; or if a man promises to give 1000*l.* to another man if he will marry his daughter, the man is entitled to the 1000*l.* if he does marry the daughter. There is an *implied* consideration in many cases where none is expressed. A man may undertake to do a piece of work for another without any express bargain that he shall be paid; but if he does the work according to his agreement, the other man may be compelled to pay him. The implied consideration here is the implied promise to pay if the work is done.

The word consideration applies either to agreements about something which is to be done, which in England are generally called contracts, or to something that is done, some transfer of property, which is generally done by the act which is called a deed.

Contracts cannot be enforced if there is no consideration. A man may promise to give another 1000*l.*, but the promise cannot be enforced unless there is a consideration, which has been defined to be a reason which moves the contracting party to enter into the contract. This is not a very good definition, but it will do: the meaning is, there must be a motive which the law considers a sufficient motive. A consideration must of course be a thing lawful.

Considerations are sometimes divided into valuable considerations and good considerations. Marriage, as in the instance just given, that is a marriage intended, and afterwards carried into effect, is a valuable consideration; money, and any other thing which is of the nature of property, and has a money value, are valuable considerations. Therefore, if a man parts with his estate for a valuable consideration, the transaction is valid, and he who gets the estate has, so far as the consideration is concerned, a good title. A good consideration is the consideration of natural affection between blood relations, and a man may give his estate to another for such a consideration. But this kind of consideration is not sufficient to maintain the validity of a conveyance of property against the claim of a subsequent purchaser for valuable consideration. Thus if a man after his marriage settles an estate upon his wife and children in consideration of his natural affection, and then sells the estate for money, the purchaser will have the estate, and not the wife and children. (Hill *v.* Bishop of Exeter, 2 Taunt. 69.) Such a settlement after marriage is called voluntary or gratuitous. A settlement of property made in consideration of a future marriage, which afterwards takes place, is a settlement for valuable consideration. The actual settlement may be made after marriage, if it is made pursuant to a written agreement entered into before marriage.

In the statute 13 Eliz. c. 5, the object of which is to prevent persons from cheating their creditors by disposing of their real or personal property, it is declared that the provisions of the act do not extend to estates or interests made or conveyed "upon good consideration and *bonâ fide*," and the good consideration here means money, or money's worth, or a marriage which is then intended and afterwards takes effect. Good consideration here is therefore equivalent to what has been above defined to be a valuable consideration.

The acts 27 Eliz. c. 4, and 30 Eliz. c. 18, § 3, make void, as against subsequent purchasers, all conveyances, &c. of real property which are made for the purposes of defrauding such purchasers, unless "upon or for good consideration and *bonâ fide*." This statute has received a singular interpretation, for it has been decided that it makes void a previous conveyance, though not made with the intent to defraud any one, if the consideration is not such as the statute intends; and accordingly, as in the case just stated, if a man settles his land after marriage on his wife and children, and then sells it, the prior settlement is void as a fraudulent conveyance.

A voluntary conveyance then by a man who is at the time insolvent, is not valid against his creditors; but if a man is not insolvent at the time, a voluntary conveyance, that is, one where there is no valuable consideration, is valid against future creditors (13 Eliz. c. 5). A conveyance for valuable consideration, such as marriage, is a valid conveyance, even if a man be insolvent at the time. An insolvent man may therefore cheat his creditors by settling his property on a woman with a view to marriage, and then marrying her; but in certain cases, such settlements are not valid against creditors when made by a person who is subject to the bankrupt laws. A voluntary conveyance is not valid against a future purchaser for good consideration: it is a fraudulent transaction according to the construction of the 27th of Eliz., and as such is declared void against the purchaser. If the purchaser knew that there was such a voluntary prior conveyance, that makes no difference; his purchase is valid against such conveyance.

It appears from these instances that the legal notion of consideration is this:—the fact of there being a good consideration is evidence that there is no fraud, and the absence of it is a presumption of fraud. The doctrine of consideration is intended to protect either the giver or grantor, or other persons whom he may wish to defraud by disposing of his property.

Every deed therefore or instrument by which property is conveyed ought to show some consideration for which the person conveys the property to another; for though a deed is valid between the parties to it, when no consideration is expressed, it may be invalid with respect to other persons who are not parties to it. There is no absolute amount of consideration which can be legally required, but a very small amount of consideration might in some cases raise a presumption of fraud; and, indeed, even if the amount of consideration should be the full value of the thing conveyed, it may be necessary in some cases to inquire whether the consideration expressed was actually paid.

In the case of a contract or agreement to give or settle property, the necessity for a consideration is obvious, both for the protection of the giver, and of others to whom he is indebted, or whom it is his moral duty to provide for. No contract to give can be enforced unless there is a sufficient legal consideration. An agreement to settle property on a lawful child is such consideration: an agreement to settle property on an illegitimate child is not such a consideration.

Many curious legal questions have arisen on the doctrine of consideration, such for instance as the case of one man promising to pay the debt of another man. The general principle is, as already stated, that there must be some advantage to the person promising, either certain or prospective, which shall be a reasonable and sufficient inducement for him to promise. If a man were to give his physician a bond which should bind his executors to pay the physician a certain sum after his death, a case which has happened, the validity of the bond might

be disputed if the circumstances under which it was given were such as to raise a suspicion of fraud; for instance, if no person was privy to the transaction except the man and his physician, and if the sum should be very large, and the services of the physician altogether disproportionate to the amount.

CONSISTORIUM. [CARDINAL, p. 455.]

CONSISTORY is the court Christian, or spiritual court, formerly held in the nave of the cathedral church, or in some chapel, aisle, or portico belonging to it, in which the bishop presided, and had some of his clergy for assessors and assistants. But this court is now held by the bishop's chancellor or commissary, and by archdeacons or their officials, either in the cathedral church or other convenient place in the diocese, for the hearing and determining of matters of ecclesiastical cognizance happening within that diocese. (Burn's *Ecclesiastical Law*, tit. "Consistory.") The consistory courts grant probates of wills for the goods and chattels of a deceased person which are within their jurisdiction: but if the deceased has *bona notabilia* in two dioceses, the probate must be granted by the prerogative court of the province. The officers of a consistory court usually consist of a judge, deputy-judge, registrar, deputy-registrar, and apparitor.

By stat. 24 Hen. VIII. c. 12, an appeal lies from this court to the court of the archbishop of the province.

CONSOLS. [NATIONAL DEBT.]

CONSPIRACY. Every conspiracy to do an unlawful act which is injurious to individuals or to the public, is a misdemeanor by the common law of England. Many frauds affecting individuals, which cannot be made the subject of prosecution as such, become indictable when they are effected by the co-operation of several confederates. Thus if several persons agree by indirect means to impoverish a third person, as by circulating calumnies injurious to his character or credit, the offence is punishable as a conspiracy, though the concerted acts alone, when committed by individuals, could only have formed the subject of a civil action by the injured party. Another instance of this is the case of a conspiracy among journeymen or servants to raise the price of wages by refusing to work under a certain price. [COMBINATION LAWS.] In former times persons convicted of conspiracy at the suit of the king (the nature of which offence is very doubtful) were liable to receive what was called *villanous* judgment, by which they were rendered incapable of acting as jurors or witnesses, their lands and goods were forfeited for life, and their bodies committed to prison. This judgment was never, however, inflicted upon persons convicted of conspiracies of a less aggravated kind at the suit of the party; and in modern times, the villanous judgment having become obsolete by long disuse, the punishment of conspiracy has been by fine, imprisonment, and sureties for good behaviour, at the discretion of the court.

(Russell, *On Crimes and Misdemeanors*, vol. ii.)

CONSTABLE. This word is supposed by Ducange, Spelman, Cowell, and other legal writers, to be corrupted from *comes stabuli*, which was another name for the *tribunus stabuli*, or *praepositus equorum*, a kind of master of the horse, frequently mentioned as an officer of state in the middle ages. (Ducange, *Glossary*, ad vocem *Comes Stabuli*.) Sir Edward Coke, Selden, and several other writers, insist upon another etymology—from two Saxon words, *koning*, a king, and *stapel* or *stabel*, a stay or support—*quasi columen regis*. Both these derivations are equally remote from the description of the office of our modern constable; but the former appears to be far the more probable; and, in accordance with it, the Constable of France was an important officer of the highest rank in that country, who had the chief command of the army, and had cognizance of military offences: it was also his duty to regulate all matters of chivalry, such as tilts, tournaments, and feats of arms. This office was suppressed in France by an edict in the year 1607: it was revived by Napoleon, and constituted one of the six grand dignities under the French empire; and was finally abolished upon the restoration of the Bourbon dynasty, in 1814.

Immediately after the Norman con-

quest we find in England an officer of the crown called the lord high constable, whose duties, powers, and jurisdiction were in most respects like those of the Constable of France. The office was one of great dignity and power, both in war and peace, the constable having the command of the army and the regulation of all military affairs. He was the supreme judge of the court of chivalry, in which character his encroachments upon other courts were so heavy a grievance, that the stat. 13 Rich. II. c. 2, was passed to restrict his jurisdiction to "contracts and deeds of arms and things which touch war, and which cannot be discussed or determined by the common law." The office, for several centuries after the Conquest, passed by inheritance in the line of the Bohuns, earls of Hereford and Essex, and afterwards in the line of their heirs-general, the Staffords, dukes of Buckingham, in right of certain manors held by them by the feudal service of being constables of England. The fees of the office were extremely burdensome to the crown; and the possession by a subject of the hereditary right to command the militia of the realm, independently of any royal appointment, was an unusual and frequently a dangerous power; and on this account Henry VIII., in the early part of his reign (1514), consulted the judges respecting the means of abolishing the tenure. He was advised by them, that as the individuals holding the manors were only compellable to exercise the office *ad voluntatem regis*, he had the power of discharging the feudal service altogether; and acting upon this opinion, the king abolished the office, by disclaiming to have the services any longer executed. (Dyer, *Reports*, p. 285 b.) The effect of this was, that Edward Stanley, the last duke of Buckingham in that line, the hereditary high constable of England at the time of this resolution, held the manors after this period discharged of the service of being constable. All doubt which might have been suggested respecting the legal extinction of the office by this means was removed eight years afterwards by the attainder of the duke of Buckingham for high treason, upon which even the manors in question were forfeited to the crown. Since that time the office of high constable has never been granted to any subject, excepting for some special occasion, such as the king's coronation or trials of peers.

"Out of this high office," says Lambard, in his 'Duties of Constables,' "the lower constableship was first drawn and fetched, and is (as it were) a verie finger of that hand; for the statute of Winchester, which was made in the time of Edward I., and by which the lower constables of hundreds and franchises were first ordained, doth, amongst other things, appoint that, for the better keeping of the peace, two constables in every hundred and franchise should make the view of armour." He then concludes, in justification of his etymology of the term, that "the name of a constable in a hundred or franchise doth mean that he is an officer that supporteth the king's majesty in the maintenance of his peace." This derivation of the office of a common constable seems very improbable, especially as it is the better opinion that these officers were known to the common law before the statute of Winchester. (Hawkins, *Pleas of the Crown*, book ii. cap. 10.) Chief Justice Fineux, in the reign of Henry VII., gives a more reasonable account of the matter. He says that when the superintendence of the peace of a county was found too great a task for the sheriff, hundreds were formed, and a conservator of the peace, under the sheriff, appointed in each, who was called a constable. This was the high constable, or constable of the hundred. As population increased and towns sprung up, it was found expedient to make a further subdivision for the preservation of the peace, and accordingly conservators were appointed for manors, vills, and tithings, who were then called petty constables. (*Year-Book*, 12 Henry VII. pl. 18.)

Constables, in the usual acceptation of the term at the present day, are of two kinds: constables of hundreds, who are still called high constables; and constables of vills or tithings, who are called either petty constables or tithingmen. Both high and petty constables were formerly chosen by the jury at a court leet, and were sworn in and admitted there by

the lord or his steward; but until recently the high constables were usually chosen by the magistrates at quarter-sessions. The petty constables are still often chosen by the homage at the court-leet; but by the stat. 13 & 14 Car. II. c. 12, § 15, it is enacted, that if any constable shall die or go out of the parish, any two justices shall make and swear a new constable, until the lord of the manor shall hold a court, or until the next quarter-sessions, who shall approve of them or appoint others. By virtue of this statute, and by reason of the frequent disuse of courts-leet in modern times, the duty of nominating and swearing the constables is now generally discharged by the justices of the peace.

By the Metropolitan Police Acts, 10 Geo. IV. c. 44, and 2 & 3 Vict. c. 47, the police force are appointed by direction of the Secretary of State, and sworn in as constables by the commissioners; and in boroughs affected by the provisions of the Municipal Reform Act (5 & 6 Wm. IV. c. 76), constables are now appointed by the Watch Committee, under the authority of the 76th section of that statute. County and district constables (rural police) may be appointed by the justices at quarter-sessions, under 2 & 3 Vict. c. 93, and 3 & 4 Vict. c. 88; constables (a police) for the protection of property on canals and rivers, by justices in counties, and by the Watch Committee in boroughs, under 3 & 4 Vict. c. 50. By these acts the duties of the office of constable are altered, as well as the mode of appointment. By 5 & 6 Vict. c. 109, parish constables may be appointed by the justices from the lists to be returned by the vestries, and vestries may unite to appoint a permanent and salaried constable for a union of parishes. These recent modifications of the ancient office of constable are noticed under POLICE. The office of constable at common law is a yearly appointment, and if any officer has served longer than a year, the justices at quarter-sessions will, upon his application, discharge him, and appoint another officer in his stead.

Besides these general constables, two or more justices of the peace, upon information that disturbances exist or are apprehended, are authorized by the stat. 1 & 2 Wm. IV. c. 41, to appoint special constables; and by the 83rd section of the Municipal Reform Act magistrates in boroughs are authorized to swear in as many inhabitants as they think fit to act as special constables when called upon. The act 5 & 6 Wm. IV. c. 43, and 1 & 2 Vict. c. 80, enlarged the provisions of 1 & 2 Wm. IV. c. 41, by enabling justices to appoint persons to act as special constables in other places than where they resided, and to pay constables engaged to suppress outrages by labourers and others engaged on railways and other public works.

By 7 & 8 Vict. c. 33, an act was passed for "relieving high constables from attendance at quarter-sessions, in certain cases, and from certain other duties." It was formerly the duty of the high constable to collect and pay the county rates to the county treasurer, but the duty is transferred to the Boards of Guardians; and in parishes which are not in any union, it devolves upon the overseers. High constables for each division are to be appointed at the special sessions held for hearing appeals against the rates, and not at the quarter-sessions, as heretofore.

In general all the permanent inhabitants within a district, borough, parish, or place, are liable to serve as constables; but they must be persons of good character and of competent ability; and the lord or steward of the manor at the leet, or the justices, may exercise a discretion as to the appointment of proper persons. It is obligatory upon a constable who has been legally appointed to serve the office, unless he can show some lawful exemption; and if he refuses to serve, he may be fined or punished by indictment. The following persons are exempt from serving the office; namely, members of the colleges of physicians and surgeons, and the Apothecaries' Company in London, practising barristers, attorneys, dissenting ministers following no trade or other employment except that of a schoolmaster, schoolmasters, parish-clerks, clerks of guardians in poor-law unions, masters of workhouses, churchwardens, overseers and relieving-officers, registrars and superintendent-registrars; and game-

keepers, victuallers, licensed retail beer-sellers, and dealers in exciseable liquors, are disqualified.

The Metropolitan Police Act and the Municipal Reform Act contain provisions that the constables to be appointed under those statutes respectively shall have all such powers and privileges, and be liable to all such duties and responsibilities as any constable has within his constablewick by virtue of the common law of this realm. In consequence of these provisions, it becomes of great practical importance to ascertain with precision the common-law incidents of the office of constable.

1. By the common law, constables are said to have been conservators of the peace; and in consequence of this character, probably, every constable has undoubted authority to arrest all persons who commit an affray, assault, or breach of the peace *in his presence*, and keep them in safe custody until they can be brought before a magistrate. But as his duty is to preserve the peace, and not to punish for the breach of it, it is doubtful whether he can arrest by his own authority and without a warrant, upon the information or charge of a third person, for an affray committed in his absence. (See the case of Timothy *v.* Simpson, 1 Crompton, Meeson, and Roscoe's *Reports*, p. 760.) By the Metropolis Police Act, and the Municipal Corporation Reform Act, constables appointed under those acts are expressly authorised, in charges of petty misdemeanor in the night time, to take bail by recognizance for the appearance of the offender before a magistrate within a limited time.

2. A constable having reasonable cause to suspect that a felony has been committed, may arrest and detain the supposed offender until he can be brought before a magistrate to have his conduct investigated; and he will be justified in so doing even though it should afterwards appear that in fact no felony was committed. In this case there is a distinction between the authority of a constable and that of a private person; the former may arrest if he can show a reasonable ground of suspicion that a felony has been committed; but a private person, in order to justify himself for causing the imprisonment of another, must prove, in addition to the reasonable suspicion of the individual, that a felony has actually been committed. A constable is bound to arrest any person whom he sees committing a felony, or any person whom another positively charges with having committed a felony; but generally speaking, he has no authority to arrest for a misdemeanor, either upon his own reasonable suspicion or the charge of another person, without a magistrate's warrant. With respect to the authority of a constable to arrest for felony or breach of the peace, Mr. Justice Buller is reported to have said, that "if a peace-officer, of his own head, takes a person into custody on suspicion, he must prove that such a crime was committed; but if he receives a person into custody on a charge preferred by another of felony or breach of the peace, then he is to be considered as a mere conduit; and if no felony or breach of the peace was committed, the person who preferred the charge alone is answerable." Lord Ellenborough, in the case of Hobbs *v.* Branscomb (3 Campbell's *Reports*, 420), said that "this rule appeared to be reasonable."

3. Constables were authorised by the common law to arrest such "strange persons as do walk abroad in the night-season." (Lambard's *Constable*, p. 12.) This authority, which was perhaps sufficiently definite in times when the curfew was in practice and when watch and ward were kept, is at the present day of so vague a nature, that a peace-officer could scarcely act under it without danger of an action in every particular instance. It is, however, obviously essential to the efficiency of any system of police, that constables should be armed with some general authority of this nature, especially in towns. By the Metropolitan Police Acts (10 Geo. IV. c. 44, and 2 & 3 Vict. c. 47), it is provided that any man belonging to the police force appointed under these acts may apprehend all loose, idle, and disorderly persons whom he shall find disturbing the public peace, and any person charged by another with having recently committed an aggravated assault, or any person whom he shall

have just cause to suspect of any evil designs, and all persons whom he shall find between sunset and the hour of eight in the morning lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves, and deliver them to the constable in attendance at the nearest watch-house, to be secured until they can be brought before a magistrate. The constable may detain persons, and vessels, and carriages conveying property suspected to be stolen, &c. Offenders are to be taken to the nearest station-house, and the horses and carriages of offenders are to be detained. The Municipal Reform Act contains a similar but less comprehensive provision, authorising any constable appointed under that act, while on duty, to apprehend all idle and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of intention to commit a felony. The constable of a municipal borough under the act has power within any part of the county to which the borough belongs, and also within every other county within seven miles of such borough. Besides the specific authorities which apply to the metropolitan police district and the boroughs affected by the Municipal Reform Act, there is no doubt that in general a constable, by virtue of his common-law authority, may stop any person carrying by night a bundle or goods under circumstances of reasonable suspicion; and if upon examining him his suspicions are not removed, he may detain him in his custody. A constable has also a general authority to apprehend for offences against the Vagrant Act, 4 & 5 George IV. c. 83, or against the Larceny Act, or the Malicious Injuries Act, 7 & 8 George IV. c. 29 and 30.

4. In the execution of a warrant a constable acts only as a ministerial officer to the magistrate who signs it. He is the proper officer to a justice of the peace, and is bound by law to execute his warrants, and may be indicted for disobeying them. It is his duty to execute the warrant of a magistrate as soon as it comes to his hands; and where he arrests or distrains or does any other act, though it is not absolutely necessary that he should show his warrant, he ought always to give notice of it, and he will be wise to produce it in all cases where it is demanded; but as the warrant constitutes his justification, he is not required to part with it out of his possession. If the constable has a legal warrant to arrest for felony, or even breach of the peace, he may break open doors after having demanded admittance and given notice of his warrant; and if, after such notice, he is resisted and killed, it will be murder. If a warrant be directed to a constable by his name of office merely, he is *authorised* by the stat. 5 Geo. IV. c. 18, to execute it out of his own constablewick, provided it be within the jurisdiction of the magistrate who signs it; but he is not *bound* to do so, and may in all cases choose whether he will go beyond his own precincts or not.

5. There are several provisions for the indemnity and protection of constables in the proper discharge of their duty. Thus by the stat. 7 Jac. I. c. 5, if an action be brought against a constable for anything done by virtue of his office, he may plead the general issue and give the special matter in evidence; and if he recovers, he is entitled to double costs. Formerly if a magistrate granted a warrant in a matter over which he had no jurisdiction, the officer who executed it was liable to an action of trespass for so doing; but by the stat. 24 George II. c. 44, § 6, it is enacted, that "no action shall be brought against any constable for anything done in obedience to the warrant of a justice of the peace, until he has neglected or refused to show his warrant on being demanded so to do. And if after he has shown his warrant, any action is brought against the constable alone, without joining the justice who signed the warrant, the defendant, on producing the warrant at the trial, shall be entitled to a verdict, notwithstanding the defect of the justice's jurisdiction; and if the action be brought against the constable jointly with the justice, the constable is to be entitled to a verdict on proof of the warrant." By section 8 of the same statute, all actions against constables for anything done in the execution of their office must be

brought within six months. For the further protection of constables, the stat. 9 George IV. c. 31, § 25, enacts that persons convicted of assaults upon peace-officers in the due execution of their duty may be imprisoned with hard labour for two years, and be fined or required to find sureties for keeping the peace. (For fuller information upon the whole of this subject, see Viner's *Abridgement;* Bacon's *Abridgement;* and Burn's *Justice,* title "Constable.")

For an account of the rural police established in several counties of England, and of the constabulary in Ireland, see POLICE.

CONSTABLE, LORD HIGH, OF SCOTLAND. In the twelfth century we have a list of eleven lord high constables in Scotland. Sir Gilbert de Hay got the office in fee and heritage in the year 1314; since which time the constable's staff, then put into his hands by Bruce, has remained in the Errol family.

The office and jurisdiction of the lord high constable of Scotland differ from those of the like officer in England. No formal distribution of the powers of the lord justiciar of Scotland, such as took place at the breaking up of the aula regis of England, was ever made in the former kingdom; nor when in the course of years this happened, did the once large powers of the justiciar pass to the like officers in the one country as in the other. On the new modelling of the judicial polity of England by King Edward I., the constable and mareschal were set over a court of chivalry, with jurisdiction in matters of honour and arms. But in these the constable of Scotland never had jurisdiction. His jurisdiction was of the nature of that in England, vested by 33 Henry VIII. c. 12, in the lord steward of the king's household, or (in his absence) of the treasurer, comptroller, and steward of the Marshalsea; for according to the Leges Malc. II., he judged jointly with the mareschal in all transgressions committed within certain limits of the king's court. But even this jurisdiction seems to have been exercised in fact by the lord justiciar; the constable only protesting against the interference with his powers. In the reign of King Charles I., a commission was issued to inquire into the nature and extent of the constable's jurisdiction; and they reported that it extended to all slaughters and riots committed within four miles of the king's person, or of the parliament or privy council. No alteration was made at the Union; and by the act 20 Geo. II. c. 43—which swept away so many other heritable jurisdictions—the office and jurisdiction of the lord high constable of Scotland were expressly reserved.

CONSTITUTION, a term often used by persons at the present day without any precise notion of what it means. Such a definition of a Constitution, if it were offered as one, might be defended as equally good with many other definitions or descriptions which are involved in the terms used whenever a constitution is spoken of.

The constitutions which are most frequently mentioned are the English Constitution, the constitutions of the several States composing the North American union, the Federal constitution, by which these same States are bound together, and various constitutions of the European continent.

The *vague* notion of a constitution is that of certain fundamental rules or laws by which the general form of administration in a given country is regulated, and in opposition to which no other fundamental rules or laws, or any rules or laws, can or ought to be made.

The *exact* notion of a constitution cannot be obtained without first obtaining a notion of sovereign power. The sovereign power in any state is that power from which all laws properly so called proceed; it is that power which commands and can enforce obedience. Such a power, being sovereign or supreme, is subject to no other power, and cannot therefore be bound by any rules laid down, either by those who have at any previous time enjoyed the sovereign power in the same community, or by any maxims or rules of conduct practised or recommended by its predecessors in power, whether those rules or maxims be merely a matter of long usage or solemnly recorded in any written instrument. The sovereign power for the time is supreme, and can make

what laws it pleases without doing any illegal act, and, strictly speaking, also without doing any unconstitutional act. For this word Constitution, taken in its strongest sense, can never mean more than a law made or a usage sanctioned by some one or more possessed of sovereign power, which law or usage has for many generations been observed by all those who have successively held the sovereign power in the same country. To modify or destroy such a rule or law might be unwise, as being an act in opposition to that which many successive generations had found to be a wise and useful rule; it might be dangerous as being opposed to that to which the experience or prejudices of many generations had given their sanction; and it might lead to resistance on the part of the governed, if either their own interest or their passions were strong enough to lead them to risk a contest with the sovereign power. If (as would generally be admitted) the assembled parliament of Great Britain and Ireland possess the sovereign power, there is no act which they could do which would be illegal, as everybody must admit: and further, there is no possible act which they could do which would be unconstitutional, for such act would be no more than repealing some law or usage having the force of law which the mass of the nation regarded with more than usual veneration, or enacting something at variance with such law or usage. For example, if the next assembled parliament should abolish the trial by jury in all cases, such an act might be called by some persons illegal, unconstitutional, and unwise. But it would not be called illegal by any person who had fully examined into the meaning of the word Law; it would not be called unconstitutional by any man who, having called it illegal, wished to be consistent with himself: it could only be properly called wise or unwise by those who had reflected sufficiently on the nature of the institution and its operations to know whether such a modification would do more good or harm.

The words constitution and unconstitutional appear to be only strictly applicable to those cases where the sovereign power, whether held by one, or two, or five hundred, or all the males of an independent political community who are above a certain age, or by any other number in such a community, lays down certain rules to regulate the conduct of those to whom the sovereign power intrusts the legislative functions. Such are the Constitutions of the several states composing the North American Union, and such is the Constitution of the Federation of these several states. In these several states the people, in the mass, and as a general rule, are the sovereign. The people assembled by their delegates, named for that especial purpose, have framed the existing Constitutions; and they change the same Constitutions in the same way whenever the majority of the people, that is, when the sovereign, chooses to make such change.

These constitutions lay down certain rules, according to which the legislative, executive, and judicial functionaries must be chosen; they fix limits to their several powers, both with respect to one another, and with respect to the individuals who compose the sovereign. "They do ordain and declare the future form of government." For example, the Constitution of Virginia of 1776 declares "that all ministers of the Gospel of every denomination shall be incapable of being elected members of either House of Assembly, or of the Privy Council." The same rule, we believe, forms a part of the amended Constitution of the same state. If the Virginian legislature were to pass an act to enable clergymen to become members of the House of Assembly or of the Privy Council, such an act would be unconstitutional, and no one would be bound to obey it. The judiciary, if such a matter came before it, would, in the discharge of its duty, declare it unconstitutional, and such so-called law could have no further effect than if any unauthorized body of men had made it.

A constitution, then, is nothing more than an act of the sovereign power, by which it delegates a part of its authority to certain persons, or to a body, to be chosen in a way prescribed by the Act of Constitution, which at the same time fixes in a general way the powers of the body to which a part of the sovereign power is thus delegated. And the sove-

reign power changes this Constitution whenever it pleases, and in doing so acts neither constitutionally nor unconstitutionally, but simply exercises its sovereign power. No body can act unconstitutionally except a body which has received authority from a higher power, and acts contrary to the terms which fix that authority. Wherever, then, there is a sovereign power, consisting either of one, as the Autocrat of Russia, of three members, king, lords, and commons, as in England (provided these three members do possess the complete sovereign power), or of all the males born of American citizens and of a given age, and of all naturalized foreigners, as in most of the United States of North America—such sovereign power cannot act unconstitutionally. For to act unconstitutionally would be to act against a rule imposed by some superior authority, which would be a contradiction.

A constitutional government may be either purely democratical, as those of the United States of North America, or it may be republican, that is, a government in which the sovereign power is simply defined as not being held by one person, as in France and England. It may be of such a kind that it shall approach very near to a monarchy, if the king or other head of the state is by the constitution invested with very great powers, or such powers as may enable him to overpower, overawe, or render incapable of action, the other limbs of the Constitution. A constitutional government may be of the aristocratical kind, as England, where the power of the crown is now very limited in practice, and is in effect wielded by the small number who for the time obtain the direction of affairs by means of being able to get a majority of the House of Commons; for this body, though elected by the people, cannot yet be considered as a really popular body. The French king, under the Charter, has greater powers than the English king has in fact, though in theory it may seem otherwise. The present King of the French presides in his own Cabinet; the English Cabinet deliberates without the presence of the king, whose wishes, in opposition to those of the Cabinet, can never be carried into effect. The Cabinet consists of the responsible ministers; they are the king's servants, but so long as they are in office they act as they please. But whatever variety of form there may be in constitutional governments, the essential element to a constitutional government, as here understood, is an assembly of representatives chosen by all the people, or by a considerable proportion of them. This is the body on which a constitutional government depends for its strength, its improvement, and its existence. This is the element out of which ought to come all the ameliorations of the condition of the people which can be effected by legislative measures. The limb or member of a constitutional government, which is composed either of hereditary peers, or of peers named for life by a king, is from its nature an inert body. It may resist unwise and hasty change, but it is not adapted for any active measures.

The policy of having a constitution in a state where the sovereign power is in the hands of all the citizens may be defended on general grounds of convenience. When the community have settled that certain fundamental maxims are right, it is a saving of time and trouble to exclude the discussion of all such matters from the functions of those to whom they have by the constitution intrusted legislative power. Such fundamental rules also present a barrier to any sudden and violent assumption of undue authority either by the legislative or executive, and oblige them, as we see in the actual workings of constitutions, to obtain their object by other means, which, if not less dangerous in the end, are more slow in their operation, and thus can be detected and are exposed to be defeated by similar means put in action by the opposing party. There are disadvantages also in such an arrangement. Constitutional rules when once fixed are not easily changed; and the legislative body when once established, though theoretically, and in fact too, under the sovereign control, often finds means to elude the vigilance and defeat the wishes of the body to which it owes its existence, and from which it derives its power. One of the great means by which these ends are

effected is the interpretation of the written instrument or constitution, which is the warrant for their powers. The practice of torturing the words of all written law, till in effect the law or rule is made to express the contrary of what seemed to be at first intended, appears to be deeply implanted in the English race, and in those of their descendants who have established constitutional forms on the other side of the Atlantic. The value of all written instruments, whether called constitutions or not, seems considerably impaired by this peculiar aptitude of men to construe words which once seemed to have one plain meaning only, so that they shall mean anything which the actual circumstances may require, or may seem to require.

It is beside our purpose to discuss the advantage of a Constitution in a community where the sovereign is one. Being supreme, the sovereign may change the Constitution when he pleases. It may be said that if the Constitution is good, and has been allowed to stand by several successive possessors of the sovereign power, it obtains an apparent prescriptive authority, which is the more binding on the sovereign, as the mass of the nation habitually regard this same Constitution as something which even the sovereign cannot touch with impunity. It would shock common prejudice if the actual sovereign were to violate that which has been sanctioned by his predecessors, and is recommended by an apparently higher antiquity than the power which, in the actual sovereign's hands, appears to be of more recent birth. The precise meaning of what is called the English Constitution must be got from the various writers who have made its origin and progress their study. In reading them it may not be amiss to bear in mind that the word Constitution, as used by them, has not the exact, but the vague meaning as explained above.

States where there is a king, or other person with corresponding name and power, are now most usually distributed into the two classes of monarchies and constitutional monarchies. The term Monarchy is a proper term to express a form of government in which one man has the sovereign power, as in Russia. The term Constitutional Monarchies is not an appropriate term, because the word monarchy is not capable of a limitation of meaning without the implication of a contradiction in terms. Still the expression is used, and it is understood to express those states in which the kingly power is limited or defined by a written instrument, which also lays down certain general rules affecting the form of government and the condition of the people, which are not to be varied by any legislative act. Such an instrument is the French Charte [CHARTE], under which France, instead of being a monarchy, as it was once, is now a constitutional state, or, as it is called, a constitutional monarchy. This act, which proceeded from the king (Louis XVIII.), cannot be revoked by any future king consistently with good faith; and, besides this, such revocation would be followed by resistance to the government, if the actual government were not too strong to be resisted. The violation of such a solemn act would, in the opinion of all mankind, justify revolution, and the inflicting the punishment of death on all who advised or participated in so flagrant a violation of good faith.

At present there is a struggle in some countries, as in Prussia for instance, between the sovereign (the king) and his subjects, who call for a constitution. The late King of Prussia, Frederick William III., solemnly promised his people a constitution in the hour of difficulty, on the 22nd of May, 1815, when Napoleon was again threatening Prussia and all Europe. The promise was a reward due to the Prussian nation, for their services in the years 1813, 1814: it was a compensation due for the blood shed at Leipzig, and the overthrow of the enemy of all freedom and constitutions. He promised not only a representative system for the eight provinces of Prussia, but a representative system for all Prussia; the only sure foundation on which that kingdom can now stand. Frederick William III. died on the 7th of June, 1840, without having fulfilled his promise of giving Prussia a general representative system,—without having made good the solemn promise of a king to a people who had again built

up his throne that had crumbled to the dust before the armies of France. The son of Frederick William III., King Frederick William IV. of Prussia, has declared to the states of Posen, on the 9th of September, 1840, that his father's promise does not bind him, because his father thought a constitution incompatible with the good of his people, and accordingly gave them, in place of it, the law of the 5th of June, 1823. To this it is replied, that the law of the 22nd of May, 1815, promised provincial estates and representatives for the whole nation. The law of the 5th of June, 1823, established the provincial estates, and gave a prospect of the representatives of the nation being called together; consequently, in making this renewal of his promise, Frederick William III. could not have intended that the second law should stand in the place of the first. (*Das Königliche Wort,* Friederich Wilhelms III., von Dr. Johann Jacoby, dated Königsberg, 16th December, 1844, but printed in London.)

In some monarchical governments, as in Prussia, a constitutional government is of urgent necessity. When a nation has reached a certain point in its social progress, a participation in the sovereign power becomes a universal desire. It does not follow that a nation will be better administered because the people participate in the sovereign power, but they will not be satisfied till they do participate in it; and that is the important matter for an absolute power to consider. The representatives may often, and will certainly sometimes, enact laws which are mischievous to themselves; but that is an incident to, or an accident in, a constitutional system, not its essential. The essential of a constitutional system is to call all men into political activity as members of a state, to secure the highest degree of individual freedom that is consistent with the general interest, to establish a real national character by making each man a potentia land living member of the body corporate, and, above all, to keep a tight and steady hand upon the public purse; to see that no more taxes are raised than are necessary for the due support of the administration, and to see that they are raised in such a way as to bring the largest sum into the treasury with the least detriment to the individual. Freedom of publication, or, as it is usually called, the liberty of the press, is in modern times indispensable as a means of maintaining constitutional freedom where it exists, and of attaining it where it does not. In an absolute government, like Prussia, it is restrained by a censorship: in France, which is a young constitution, it is checked by severe enactments; in England the freedom of the press is amply secured both by law and usage. In the actual state of Germany, in which political life hardly exists, the establishment of a true constitutional government in Prussia would be the commencement of a new æra for the Germanic nation. The Russian subjects of the Czar of Muscovy, or of the greater part of his dominions at least, may be at present as contented and as well governed as they would be under a constitution; for a constitution, in order to be beneficial, must be founded upon a representation of a whole nation which has political knowledge, or of a majority so large that the minority shall be insignificant when compared with it.

In the articles CHARTE and UNITED STATES, CONSTITUTION OF, an account is given of the constitutions of France and the United States of North America, which countries, and England, enjoy a higher degree of constitutional freedom than any other states. Spain has made extraordinary efforts to obtain the advantages of a constitution. [CORTES.] Some of the smaller states of Germany have constitutions, as Würtemberg, Hanover, Baden, Hesse Darmstadt, Hesse Cassel, Nassau, &c. The European states which have no constitution are Russia, Austria, Prussia, Ottoman Empire, Naples and Sicily, Papal States, Grand Dukedom of Tuscany, Dukedom of Parma, Dukedom of Modena, Dukedom of Lucca, Sardinia, the Principality of Monaco, &c. The constitutions of Mexico and of the Republics of South America resemble that of the United States. Brazil has a constitution and a representation.

For the nature of a Federal Government, which necessarily implies the notion of a Constitution, see FEDERATION.

CONSTITUTIONS AND CANONS ECCLESIASTICAL. King James I., in the first year of his reign in England, by his writ directed to the Archbishop of Canterbury, summoned and called the "bishops, deans of cathedral churches, archdeacons, chapters and colleges, and the other clergy of every diocese within the province of Canterbury," to meet in the Cathedral Church of St. Paul in London, to "treat, consent, and conclude upon certain difficult and urgent affairs mentioned in the said writ." The persons so summoned met in Convocation, and "agreed upon certain canons, orders, ordinances, and constitutions, to the end and purpose" by the king "limited and prescribed unto them;" to which the king, out of his "princely inclination and royal care for the maintenance of the present estate and government of the Church of England by the laws of this realm now settled and established," gave his royal assent by letters-patent, according to the form of the statute of the twenty-fifth year of King Henry VIII. The king, by his prerogative royal and supreme authority in causes ecclesiastical, commanded these said canons, orders, and constitutions to be diligently observed, executed, and kept by his loving subjects of the kingdom, both within the provinces of Canterbury and York, in all points wherein they do or may concern every or any of them; and the king also commanded that every minister, by whatever name or title soever he be called, shall in the parish church or chapel where he hath charge read all the said canons, orders, ordinances, and constitutions once every year, upon some Sundays or holydays, in the afternoon before divine service

The canons and constitutions may be divided into fourteen heads, which treat as follow:—1. Of the Church of England. 2. Of divine service, and administration of the sacraments. 3. Ministers, their ordination, function, and charge. 4. Schoolmasters. 5. Things appertaining to churches. 6. Churchwardens, or questmen, and side-men, or assistants. 7. Parish clerks. 8. Ecclesiastical Courts belonging to the archbishop's jurisdiction. 9. Ecclesiastical Courts belonging to the jurisdiction of bishops and archdeacons, and the proceedings in them. 10. Judges ecclesiastical and their surrogates. 11. Proctors. 12. Registrars. 13. Apparitors. 14. Authority of synods. The number of constitutions is one hundred and forty-one. The authority of these canons is binding on the clergy, but not on the laity, except so far as is stated under the head CANON, p. 446. The authority of Canon 77 may be doubted; it is this: "No man shall teach, either in public school or private house, but such as shall be allowed by the bishop of the diocese, or ordinary of the place, under his hand and seal; being found meet as well for his learning and dexterity in teaching, as for sober and honest conversation, and also for right understanding of God's true religion; and also except he shall first subscribe to the first and third articles afore mentioned simply, and to the first ten clauses of the second article." The 78th Canon provides that "curates desirous to teach shall be licensed before others;" and 79 declares "the duty of schoolmasters." The Constitutions and Canons Ecclesiastical have been printed by the Society for Promoting Christian Knowledge, London, 1841, together with the Thirty-Nine Articles of the Church of England.

CONSTITUTIONS, ROMAN. The word Constitutio (from *constituere*, to set up, to establish) signifies any disposition or appointment; for example, an edict of the prætor is called constitutio (*Dig.* 4, tit. 2, s. 1. 9). The decrees and decisions of Roman emperors are also called constitutiones; and, according to Gaius (i. 5), an imperial constitution is what the emperor declares by a decree, or an edict, or a letter (epistola). That modern signification of the term, which denotes the fundamental law of a state, was not in use among the Romans; yet Cicero (*De Republica*, i. 45) employs the word to express a similar notion. An imperial constitution, then, was a rule of law established by the Roman emperor, either as a judge or as a legislator. A Decree (decretum) was a judgment in some matter brought before the emperor either upon appeal or originally. Some of these decreta were final, and, at least after the legislation of Justinian, had the force of

law; but interlocutory judgments had not. An Edict (edictum, edictales leges) was an ordinance promulgated by the emperor, and as a general rule applicable to all his subjects. The word Epistola is a general name for any constitution which was promulgated in the form of a letter; and this term also comprises Subscriptiones and Annotationes, which were short answers to questions propounded to the emperor, and written, as these terms import, at the foot or on the margin of the paper which was laid before him. Rescripts (rescripta) were properly answers to an individual who presented a petition to the emperor, or to magistrates who prayed for his advice in any matter. Rescripta, according to their nature, were only applicable to a particular case, though they might contain general principles which would be applicable to other cases, and so in time they would obtain the force of law. Mandata were instructions to the provincial governors for their direction in matters of administration. All these forms of expressing the imperial pleasure, though originally not equally binding as general laws, became in various ways rules of law, and formed a part of what appear in the codes of Theodosius and Justinian as imperial constitutions.

The origin of this system of legislation is properly referred to the time of Octavianus Augustus, who united in his person the various kinds of authority which, under the Republic, were distributed among several magistrates. From the time of Augustus, legislation by the popular assemblies fell gradually into disuse, and the ordinances of the senate (senatus consulta) were the shape in which laws were formally promulgated. The legislation of the senate was superseded by the Orationes Principum, or messages of the emperor to the senate, which contained his proposed laws, to which the senate gave a formal assent. Still later, about the time of Hadrian and the Antonines the edicta and rescripta of the emperor became the usual form of legislation; and finally imperial constitutions, as above explained, became the only source of written law.

In course of time the number of these constitutions became so great, that to prevent confusion collections were made, and called Codes. The first collections made by private persons were the codices Gregoriani and Hermogeniani, of which we know very little; it is even uncertain if they were two separate codes or only one, but the general opinion is that there were two codes. Opinions vary as to the time when these compilers lived. The Gregorianus Codex was divided into books and titles. Of the Hermogenianus only twenty-five constitutions are preserved. These collections, which contained the constitutions from the time of Septimius Severus to Diocletian, are lost, and we have only some fragments, which were first edited by Jac. Sichardus (Basil. 1528, fol.), together with the Codex Theodosianus. The fragments are in Schulting's 'Jurisprud. Vet. Antejust,' Lugd.-Bat. 1712, and in the 'Jus Civile Antejust.,' Berol. 1815.

Another and more important collection was made under the reign of Theodosius II., by public authority. The emperor nominated, in the year 435, a commission of sixteen persons, under the direction of Antiochus, for the purpose of collecting the constitutions from the time of Constantine the Great; and three years afterwards (A. D. 438), the new code, called Codex Theodosianus, was confirmed by the emperor, and published in the Eastern empire. In the same year (438) the code was sent to Rome to Valentinian III., and confirmed as law for the Western empire. This compilation was formed on the model of those of Gregorianus and Hermogenianus. It contains sixteen books, divided into titles, in which the separate constitutions are arranged, according to their subject-matter, in such a way that many of them are subdivided. Some additions, called Novellæ, were afterwards made to the collection of Theodosius. The first five books were lost, but some parts of them have been discovered at Milan, by Clossius (Clossii, 'Theodos. Codic. Genuin. Fragmenta,' Tüb. 1824); and at Turin, by Peyron ('Codic. Theodos. Fragmenta Ined.,' Tur. 1823-24). Carlo Baudià Besme has recently discovered at Turin palimpsests which contain valuable additions to, and means of improving the text of the Theodosian Code. The edition of the Theodosian Code by Jac. Gotho-

fredus, tom. vi. Lugd., 1665, is valuable for the commentary which was also published, together with the text, by Ritter, Leipzig, 1736-54. The last edition is the valuable critical edition of G. Haenel, Bonn, 1837.

In the year 506, Alaric II. caused an abridgment to be made of the Theodosian Code, to which were added excerpts from the codices Gregoriani and Hermogeniani, and of the works of the Roman lawyers Gaius and Paulus, for the use of the Romans then living in the empire of the Visigoths: the collection is called 'Breviarium Alaricianum.'

The last and most important collection of Roman constitutions was made by the order of Justinian, and is entitled Codex Justinianeus. [JUSTINIAN'S LEGISLATION.]

CONSUL. The two chief magistrates who were annually elected by the Romans were called Consuls. Their powers and functions were the same or nearly the same as those of the kings; but they were elected and only held office for a year. The original name was Praetor and not consul. The consuls were chosen solely from the Patricians, or order of old nobles, till B.C. 369, when a law was passed which allowed one of the consuls to be chosen from the commons (Plebs). After this time, sometimes both consuls were plebeians. After the establishment of the imperial power in the person of Augustus, the office of consul was little more than honorary; and the election was transferred from the people to the senate; and it also became the practice for the consuls to hold office only for a few months, in order that the emperor might gratify others with the honorary title. The Romans reckoned their epochs of time by reference to the foundation of the city, B.C. 753, according to the æra of Varro; and they marked the particular years by the names of the consuls. The first consuls were appointed B.C. 509, or in the year of the city (A.U.C.) 245: they were L. Junius Brutus and L. Tarquinius Collatinus. From B.C. 509 there are extant the names of consuls down to A.D. 541. These names were registered in the Roman Fasti, which is the Roman name for the registered list of their magistrates; and though there are some discrepancies in the various authorities from which our complete lists of consuls are compiled, the series is on the whole established by good evidence. The consuls under the Empire were consuls only in name.

The word consul, like many other Roman terms, has passed into the languages of Europe, and modern times have witnessed the establishment of a consulate in France; the establishment in name, but in nothing else.

The word consul has been used in various senses in modern times. The Genoese had consuls in the factories or ports which they established. [COLONY, p. 560.] Richelet (*Dictionnaire*) speaks of a consul as a judge at Paris who settled disputes among merchants: his office lasted only a year. He adds that many of the old counts in France were called consuls. The name was also used in the courts of Provence and Languedoc in the sense of Echevin. [ECHEVIN.]

A modern consul is an officer appointed by a government to reside in some foreign country, in order to give protection to such subjects of the government or citizens of the state by which he is appointed as may have commercial dealings in the country where the consul resides, and also to keep his government informed concerning any matters relating to trade which may be of advantage for it to know. To these duties are sometimes added others with objects more directly political, but into this part of a consul's duty it is not necessary to enter at present, as such functions are assigned to consuls not as such, but in the absence of an ambassador or other political agent. The duties of an English consul, as such, cannot perhaps be better described than by giving the substance of the general instructions with which he is furnished by the government on his appointment.

His first duty is to exhibit his commission, either directly, or through the English ambassador, to the authorities of the country to which he is accredited, and to obtain their sanction to his appointment: the document whereby this sanction is communicated is called an

exequatur; its issue must precede the commencement of his consular duties, and its possession secures to the consul "the enjoyment of such privileges, immunities, and exemptions as have been enjoyed by his predecessors, and as are usually granted to consuls in the country in which he is to reside." It must be the particular study of the consul "to become conversant with the laws and general principles which relate to the trade of Great Britain with foreign parts; to make himself acquainted with the language and with the municipal laws of the country wherein he resides, and especially with such laws as have any connexion with the trade between the two countries." It is the consul's principal duty "to protect and promote the lawful trade and trading interests of Great Britain by every fair and proper means;" but he is at the same time "to caution all British subjects against carrying on an illicit commerce to the detriment of the revenue and in violation of the laws and regulations of England, or of the country in which he resides;" and he is to give to his own government notice of any attempt at such illicit trading. The consul is "to give his best advice and assistance, whenever called upon, to his majesty's trading subjects, quieting their differences, promoting peace, harmony, and good-will amongst them, and conciliating as much as possible the subjects of the two countries upon all points of difference which may fall under his cognizance." Should any attempts be made to injure British subjects in person or in property, he is to uphold their rightful interests and the privileges secured to them by treaty. If, in such cases, redress cannot be obtained from the local administration, he must apply to the British minister at the court of the country in which he resides, and place the matter in his hands. The consul must transmit to the secretary of state for foreign affairs at the end of every year a return of the trade carried on at the different ports within his consulate, according to a form prescribed. He is also required to send quarterly an account of the market prices of agricultural produce in each week of the preceding three months, with the course of exchange, and any other remarks which he may consider necessary for properly explaining the state of the market for corn and grain. It is further his duty to keep his own government informed as to the appearance of any infectious disease at the place of his residence. The consul is required to afford relief to any distressed British seamen, or other British subjects thrown upon the coast, or reaching by chance any place within his district, and he is to endeavour to procure for such persons the means of returning to England. He is to furnish intelligence to the commanders of king's ships touching upon the coast where he is, and to obtain for them, when required, supplies of water and provisions, and he is to exert himself to recover all wrecks and stores belonging to king's ships when found at sea, and brought into the port where he resides.

In most cases consuls are subjects or citizens of the state by which they are appointed, but this is by no means an invariable rule, and they are sometimes the subjects or citizens of the country in which they reside, or of some other country foreign to both. Persons are usually selected for filling the office from among the mercantile class, and it very commonly happens that they are engaged in commercial pursuits at the port where their official residence is fixed. In this respect the English government is chargeable with some inconsistency, for while, in many instances, British consuls are permitted to trade, in others they are expressly interdicted from so doing. It would be difficult to discover the application of any fixed principle in determining the places where either of these opposite rules has been adopted. We believe the interdiction to be of modern application, and that the desire of diminishing the public expense has since led, in many cases, to the relaxation of what was once intended to be made a general rule, for it is necessary to give a higher salary whenever trading is not allowed. Many traders are willing to undertake the office at a low rate of direct remuneration for the sake of the commercial influence which it brings, and which is frequently of far greater value to them

than any salary which the government would give. The policy of this kind of economy has been much questioned.

Stations of British consuls, &c. in 1844:—

Russia.—St. Petersburg, Archangel, Riga, Liebau, Wiburg, Warsaw, Odessa, Taganrog, Kertch.

Sweden.—Stockholm and Gottenburg.

Norway.—Christiania and Bergen.

Denmark.—Elsinore and Copenhagen.

Prussia.—Memel, Pillau, Stettin, Königsberg.

Hans Towns.—Hamburg, Bremen, Lubeck, Cuxhaven.

Holland.—Amsterdam, Rotterdam, Flushing.

Belgium.—Antwerp and Ostend.

France.—Paris, Calais, Boulogne, Hâvre, Caen, Granville, Brest, Nantes, Charente, Bordeaux, Bayonne, Marseille, Toulon, Corsica.

Spain.—Madrid, Bilbao, Corunna, Cadiz, San Lucar, Malaga, Carthagena, Alicante, Barcelona, Mahon, Teneriffe, Santiago de Cuba, Puerto Rico.

Portugal.—Lisbon, Oporto, Madeira, St. Michael's, Fayal, Terceira, Cape Verd Islands.

Sardinia.—Genoa, Nice, Cagliari.

Tuscany.—Leghorn.

Roman States.—Ancona.

Two Sicilies.—Naples, Gallipoli, Otranto, Palermo, Messina.

Austrian States.—Venice, Trieste, Fiume, Milan.

Greece.—Patras, Syra, The Piræus, Missolonghi.

Persia.—Tabreez, Tehran.

Servia.—Belgrade.

Wallachia.—Bucharest, Ibraila.

Moldavia.—Jassy, Galatz.

Albania.—Joannina, Prevesa, Scutari.

Turkey.—Dardanelles, Salonica, Adrianople, Enos, Brussa, Smyrna, Mytelene, Scio, Erzeroom, Trebisonde, Kaisseriah, Batoom, Samsoom, Moussul.

Syria.—Damascus, Aleppo, Adalia, Alexandretta, Tarsous, Beyrout, Candia, Cyprus.

Palestine.—Jerusalem.

Egypt.—Alexandria, Cairo, Damietta.

Tripoli.—Bengazi.

Tunis.—Tunis, Sfax.

Algiers.—Algiers, Oran, Bona.

Marocco.—Tangier, Mogador, Tetuan.

United States.—Portland, Boston, New York, Philadelphia, Baltimore, Norfolk, Charleston, Savannah, Mobile, New Orleans.

Texas.—Houston, Galveston.

Mexico.—Mexico, San Blas, Vera Cruz, Tampico, Matamoros.

Central America.—St. Salvador, Mosquito.

Hayti.—Port-au-Prince, Cape Haytien.

New Granada.—Bogota, Carthagena, Panama, Santa Martha.

Venezuela.—Caracas, La Guayra, Puerto Cabello, Maracaibo.

Ecuador.—Guayaquil.

Brazil.—Rio de Janeiro, Maranham, Para, Pernambuco, Bahia, Paraiba.

Monte Video.—Monte Video.

Buenos Ayres.—Buenos Ayres.

Chili.—Santiago, Valparaiso, Concepcion, Coquimbo.

Peru.—Lima, Callao, Arica, Isla.

Bolivia.—Chuquisaca.

China.—Under the treaty of August 29, 1842, consular officers are appointed at the five ports of Canton, Amoy, Foochoo-foo, Ning-po, Shang-hae, to regulate the trade between the Chinese and the subjects of Great Britain. Their duties are of course very important in the present state of our relations with China. The consul at each port is security for the payment of duties, and is bound to prosecute for all infractions of the revenue laws.

Sandwich Islands.—Woahoo.

Society and Friendly Islands.—Tahiti.

The stations of consuls-general, and agents and consuls-general, in 1845, are as follows:—

Consuls-General.—At Odessa, Christiania, Danzig, Hamburg, the Havana, Austrian States, Belgrade, Constantinople, Syria, Houston for Texas, St. Salvador for Central America, Port-au-Prince for Hayti, Bogota for New Grenada, Caracas for Venezuela, Monte Video, Santiago for Chili, Lima for Peru, Woahoo for the Sandwich Islands. The highest salary is 2000*l.* a-year.

Agents and Consuls-General.—For Egypt, Tunis, Algiers, Tangier for Marocco, and at Mosquito in Central America.

The total amount paid in salaries to

English consuls, &c. and vice-consuls in 1844 was 107,300*l.*; in 1835, 61,950*l.*; in 1825, 71,716*l.*

Under 6 Geo. IV. c. 87, the contingent expenses of the consular establishment in 1844 were 17,000*l.* They consisted of relief to distressed British subjects, expenses for chaplains, churches, burial-grounds, interpreters in the Levant, &c.

The consuls of the United States of North America do not receive salaries, except those for London, Tangier, Tunis, Tripoli, 2000 dollars each, and the consul for Beirout 500 dollars.

CONSUMPTION. [CAPITAL.]

CONTEMPT. A contempt in a court of law is a disobedience of the rules, orders, or process of the court, or a disturbance or interruption of its proceedings. Contempts by resistance to the process of a court, such as the refusal of a sheriff to return a writ, are punishable by attachment; but contempts done in the presence of the court, which cause an obstruction to its proceedings in administering the law, may be punished or repressed in a summary manner by the commitment of the offender to prison or by fining him. The power of enforcing their process, and of vindicating their authority against open obstruction or defiance, is incident to all superior courts; and the means which the law intrusts to them for that purpose are attachment for contempts committed out of court, and commitment and fine for contempts done before the court. (Viner's *Abridgment*, tit. "Contempts.")

If a defendant in Chancery, after being served with a subpœna, does not appear within the time fixed by the rules of the court, and plead, answer, or demur to the bill, he is in contempt, and he is liable to various processes in succession according to the continuance of his disobedience. The first process is attachment, which is a warrant directed to the sheriff ordering him to bring the defendant into court, who is thereupon committed to the Queen's Prison till he complies with the orders of the court.

There are also contempts against the King's prerogative, contempts against his person and government, contempts of the King's title, which fall short of treason or præmunire; and contempts against the king's palaces and courts of justice; all which contempts and their several punishments are discussed by Blackstone (*Comm.* book iv. c. 9).

CONTRABAND, from the Italian *Contrabando*, against the proclamation, a term commonly used in commercial language to denote articles the importation or exportation of which is prohibited by law. Since the adoption of the warehousing system in Great Britain, the list of goods the importation of which is prohibited has been made exceedingly short: it comprises at this time (1845) only the following articles:—

Arms, ammunition, and utensils of war, by way of merchandise, except by license from his Majesty for the public stores only.

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Clocks or watches, with any mark or stamp representing any legal British assay mark or stamp, or purporting to be of British make, or not having the name and abode of some foreign maker visible on the frame and the face, or not being complete.

Foreign goods bearing the names or marks of manufacturers in the United Kingdom are forfeited on importation.

Coin, counterfeit, or not of the established standard in weight and fineness.

Malt.

Snuff-work, tobacco-stalks, and tobacco-stalk flour.

The list of articles contraband as regards exportation from the United Kingdom is still more limited, and comprises only the following articles:—

Clocks and watches: the outward or inward case or dial-plate of any clock or watch without the movement complete, and with the clock or watchmaker's name engraved thereon.

Lace made of inferior metal, in whole or in part, to imitate gold or silver lace.

The schedule of prohibitions to importations was formerly much more extensive. Under the Customs' Act of

3 & 4 Wm. IV. c. 56, cattle, sheep, fresh beef and pork, or slightly salted, and fish were contraband; but under the tariff established by 5 & 6 Vict. c. 47, they have ceased to be contraband. Tools, utensils, and machinery were also contraband, but the restriction with respect to machinery was very much relaxed under the power given by act of parliament to the Board of Trade to license upon application the exportation of such tools and machines as in the opinion of the Board might without inconvenience be allowed to go out of the country; and the restriction was at length limited almost entirely to machinery required for the prosecution of the processes of spinning various kinds of yarn. The act 6 & 7 Vict. c. 84, repeals, with some exceptions, the prohibition against machinery.

There are some other prohibitions by which trade in certain articles is restricted, but these refer to the manner in which the trade may be conducted, as the size of the ship, or the package, or the country from or to which the trading may take place, and these being only of the nature of regulations, the articles in question cannot be considered contraband. Of this nature are the prohibitions which extend to our colonies, and which have for their object the encouragement of the trade of the mother country. The list of articles prohibited by many foreign countries is much larger than that enforced in this country.

Another sense in which the term Contraband is applied refers to certain branches of trade carried on by neutrals during the continuance of war between other countries. It has always been held under these circumstances that belligerents have a right to treat as contraband, and to capture and confiscate, all goods which can be considered munitions of war, under which description are comprehended everything that can be made directly and obviously available to a hostile purpose, such as arms, ammunition, and all kinds of naval stores, and all such other articles as are capable of being used with a like purpose, such as horses, and timber for building ships. Under some circumstances, provisions which it is attempted to convey to an enemy's port are contraband, as when a hostile armament is in preparation in that port. These restrictions rest upon principles which are reasonable in themselves, and have been generally recognised by neutrals; others which have at various times been enforced or attempted to be enforced have been contested, but a description of this branch of the subject belongs rather to the matter of International Law than to a description of contraband trading.

CONTRACT, ORIGINAL. [ORIGINAL CONTRACT.]

CONVENT, from the Latin *conventus*, an assembly or meeting together. This word is used in a double sense, first, for any corporation or community of religious, whether monks or nuns; and secondly, for the house, abbey, monastery, or nunnery in which such monks or nuns dwell. Shakspere uses it in the first sense, when he says of Wolsey—

> "At last, with easy roads, he came to Leicester,
> Lodged in the abbey; where the reverend abbot
> With all his convent honourably received him."
> Hen. VIII., act iv. sc. 2.

Addison uses it for the building:—"One seldom finds in Italy a spot of ground more agreeable than ordinary that is not covered with a convent."

Furetiere, who wrote his dictionary in the time of Louis XIV., says there were no fewer than 14,000 convents formerly in France.

Convent, as related to the foreign military orders, meant the principal seat or head of the order. Furetiere says, "La Commanderie de Boisy, près d'Orléans, est le Couvent général de l'Ordre de St. Lazare."

The earliest inhabitants of convents were termed Coenobites, from the Greek words κοινός and βίος, as living in community. They dwelt chiefly in Egypt. Fleury (*Hist. Eccles.* 4to. Paris, 1720, tom. v. p. 14) dates their institution as early as the days of the Apostles; others, probably with more correctness, give them a later origin. St. Pachomius, abbot of Tabenna, on the banks of the Nile, who was born at the close of the third century, is believed to have been the first person who drew up a rule for the Coenobites. (Moreri, *Dic. Histor.*, tom. viii.) [MONASTERY.]

CONVENTION, MILITARY, a treaty made between the commanders of two opposing armies concerning the terms on which a temporary cessation of hostilities shall take place between them. It is usually solicited by that general who has suffered a defeat, when his retreat is not secure and small chance is left of maintaining his position; and it is seldom refused by the victor, since, without incurring the unavoidable loss attending an action, his force becomes immediately disposable for other operations.

In 1757 the Duke of Cumberland, when in danger of being surrounded, entered into a convention with the Duke de Richelieu, through the medium of Denmark, by which, on consenting to disband all his auxiliaries, he was allowed to retire with the English troops across the Elbe. And in 1799, when the Anglo-Russian army failed in the attempt to deliver Holland from the French power, the Duke of York made a treaty with General Brune, by which the invading force was allowed to re-embark, on condition that 8000 French and Dutch prisoners of war in England should be restored.

After the battle of Vimeira in 1808, the Duke of Abrantes, having been defeated, and fearing a general rising in Lisbon against him, sent General Kellerman to the quarters of the British commander-in-chief, to request a cessation of arms, and propose a convention by which the French troops might be allowed to retire from Portugal. This being granted, it was finally arranged in the convention that they should not be considered as prisoners of war; and th[illegible] with their property, public and private, their guns, and cavalry horses, they should be transported to France: On the other hand, all the fortresses which had not capitulated were to be given up to the British, and a Russian fleet, then in the Tagus, was to be detained in English ports till after the conclusion of a peace. This is the celebrated convention which was made at Lisbon, and is generally but improperly called "the Convention of Cintra." It excited much dissatisfaction both in Portugal and England, as the cupidity of the French induced them to appropriate to themselves property to which they had no claim. (Napier, vol. i.). By the appointment of a committee consisting of one individual of each of the three nations, all causes of complaint were, however, finally removed.

CONVENTION PARLIAMENT. Two days after the abdication [ABDICATION] of James II., the lords spiritual and temporal, to the number of about ninety, who had taken their places in the House of Lords, requested the Prince of Orange to issue writs for a "Convention," to meet on the 22nd of January, 1689; and on the 26th of December, 1688, an assembly of such persons as had sat in parliament in the reign of Charles II., to the number of about a hundred and fifty, together with the aldermen of London, and fifty of the common council, agreed upon an address similar to that of the Lords. The prince accordingly dispatched circular letters to the several counties, universities, cities, and boroughs, for the election of members. The convention, or parliament, as it was afterwards declared to be, passed the Act of Settlement, which declared the throne vacant, and conferred the crown, with constitutional limitations to its power, on the Prince and Princess of Orange jointly. The Convention Parliament was dissolved 29th January, 1691.

CONVENTION TREATIES. These are treaties entered into between different states, under which they each bind themselves to observe certain stipulations contained in the treaty. In 1843 two acts were passed (6 & 7 Vict. c. 75 and c. 76) for giving effect to conventions between her majesty and the King of the French and the United States of America for the apprehension of certain offenders.

The act relating to France (c. 75) legalizes the convention entered into with the government of that country for the giving up of offenders who may escape from France into England. On requisition duly made by the French ambassador, a warrant will be issued for the apprehension of fugitives accused of having committed the crimes of murder (as defined by the French code), attempt at murder, forgery, or fraudulent bankruptcy; and any justice before whom they may be brought is authorized to commit them to gaol until delivered up

pursuant to the ambassador's requisition. Copies of the depositions on which the original warrant was issued, duly certified as true copies, are to be received as evidence. But no justice is to issue a warrant for the apprehension of any French fugitive unless the party applying is the bearer of a warrant or document, issued by a judge or competent authority in France, authenticated in such a manner as would justify the arrest of the supposed offender in France upon the same charge. The secretary of state will order the person committed to be delivered up to the person or persons authorized to receive him. If the prisoner committed shall not be conveyed out of her majesty's dominions within two months from the time of his committal, any of her majesty's judges, on application made to them, and after notice of such application has been sent to the secretary of state (or to the acting governor in a colony), may order such person to be discharged, unless good cause shall be shown to the contrary. The act is to extend to all her majesty's present or future possessions, and to continue in force during the continuance of the convention.

The act relating to America (c. 76) is similar in its nature and purposes to the one relating to France; but the crimes specified include, in addition, piracy, arson, and robbery, and do not include fraudulent bankruptcy.

In 1844 a case occurred of a fraudulent French bankrupt who had escaped to England, and the French government demanded that he should be given up under the Convention Treaty. He was arrested and taken to prison; but before the surrender could take place he applied for a writ of habeas corpus, on the ground that fraudulent bankruptcy was an offence unknown to the law of England, and that therefore it was contrary to law to arrest him or keep him in custody on such a charge. The warrant of commitment did not specify that the prisoner should be given up on requisition duly made according to the act, but the words were, "until he shall be delivered by due course of law." In consequence of the defective application of the Convention Treaty in this particular case the prisoner was discharged.

At the close of 1843, seven persons accused of murder, robbery, and piracy fled for security from Florida, in the United States, to Nassau, one of the Bahama Islands. They were followed by a marshal of the United States, who was authorized by his government to demand that the fugitives should be given up under the Convention Act. The governor, Sir Francis Cockburn, issued his warrant accordingly to the chief justice of the colony, authorizing and directing him to take measures for the fulfilment of the act. In anticipation of the application of the marshal, the chief justice had a warrant prepared for apprehending the fugitives, expecting that the evidence tendered would be such as could be judicially received. The only evidence offered was documentary, consisting of indictments, without the evidence upon which they were framed. The act requires that copies of the depositions upon which the original warrant was granted, certified, &c., must be adduced in order to render the provisions of the act available. The chief justice, with his associate judges, were under the necessity of refusing the warrant applied for, chiefly on the following grounds:—"An indictment per se can never be received as evidence: it is not enough for us to know that the American jury thought the parties guilty; we ought to know the grounds upon which they thought them guilty. What may constitute the crime of murder in Florida may be very far from doing so according to the British laws, or even to the laws of the Northern States of America. By issuing a warrant, then, to apprehend the parties in virtue of these indictments, we might be doing so on evidence which would not justify their apprehension by the British law, and should thereby be proceeding in direct violation of the act." (*Parl. Paper*, No. 64, sess. 1844.)

CONVICT. [TRANSPORTATION.]

CONVOCATION, the assembly of the Clergy of England and Wales, under the authority of the king's writ, which takes place at the commencement of every new parliament. The convocation writs

issue from the Crown Office, and are addressed to the two primates of Canterbury and York.

The tendency of the western states of modern Europe in political relations to become thrown into the form of which kings, lords, and commons is no inapt type, is apparent in the ecclesiastical constitution of almost every country in which Christianity has been received and professed. The archbishop has had his suffragan bishops, and the bishops each his canons, who formed his council, in some of whom have been vested peculiar functions, as dean, archdeacon, and the like; while the great body of the clergy have had their meetings under the form of diocesan synods or provincial assemblies, in which they have been accustomed to discuss matters pertaining to the common interest and benefit of themselves or of the whole church.

These meetings, resembling as they do in some points the convocation of the English clergy in later times, might easily be supposed to be that assembly in its primordial state. But writers on this subject trace the origin of the convocation to something more special than this. It is supposed that originally the clergy were thus called together by the king's authority for the purpose of assessing themselves in levies of taxes at a time when they contended for exemption from the general taxation of the country imposed by the authority of parliament. Like many other questions in our early constitutional history (we mean by "early" when we ascend beyond the reign of King Edward the First), this is perhaps one of presumption and probability, rather than of evidence and certainty. It is said that the convocation which was summoned in 1295, in the reign of King Edward the First, was for the purpose of obtaining a supply of money from the clergy by means of their representatives. Edward had taxed the clergy very heavily in 1294, and, instead of repeating the experiment, he thought it better to get some money out of them with their own consent.

The clergy were not willing to obey the king's writ which summoned them to convocation, upon which the king issued his writ to the Archbishops of Canterbury and York, who, in obedience to it, summoned the clergy in their respective provinces to grant the king a subsidy. Thus there were two convocations, one for the province of Canterbury and the other for the province of York. The convocation of Canterbury contained two houses, the Upper House of Bishops and Archbishops, and the Lower House of Deans, Archdeacons, and Proctors of the clergy. In the convocation at York, all the members composed (or at present compose) only one house.

From this time to the year 1663, the clergy were taxed in convocation in respect of their benefices and lands; and the grants of subsidies by the clergy in convocation required no confirmation except the assent of the king, who wanted the money. From the time of Henry VIII. the grants were always confirmed by act of parliament. Thus it appears that the origin of the convocation was like the origin of the House of Commons: the first object of the convocation was to grant money. By the 8 Hen. VI. c. 1, all the clergy called to convocation by the king's writ, their servants and familiars, shall enjoy the liberty, in coming, tarrying, and returning, as the commonalty called to parliament enjoy. The two convocations of Canterbury and York were quite independent of one another, and they did not always grant the same or a proportionate amount. In the twenty-second year of Henry VIII. the convocation of Canterbury granted the king 100,000*l.*, in consideration of which an act of parliament was passed which gave the clergy a free pardon for all spiritual offences, with a proviso that the pardon should not extend to the province of York, unless the clergy would show themselves equally liberal.

When such an assembly was called together under the direct authority of the crown, it was natural that ecclesiastical subjects should be introduced, discussed, and in some instances determined by it. The old doctrine was that the convocation had only authority in spiritual matters, and that they had no power to bind the temporalty, but only the spiritualty. (Comyns' *Digest*, 'Convocation.')

The crown, however, had always in its hands the power of controlling this assembly, by possessing the prerogative of proroguing and dissolving. But at the Reformation an act was passed (25 Henry VIII. c. 19), which expressly deprived the convocation of the power of performing any act whatever without the king's licence. The act declares that the "clergy, nor any of them, from henceforth shall presume to attempt, allege, claim, or put in use any constitutions or ordinances, provincial or synodal, or any other canons, nor shall enact, promulge, or exercise any such canons, constitutions, or ordinances provincial, by whatever name or names they may be called in their convocations in time coming, which always shall be assembled by authority of the king's writ, unless the same clergy may have the king's most royal licence."

By an act passed in 1665 (16 & 17 Chas. II. c. 1), the clergy were bound by the act, which was for the raising of a tax, just like the laity, and they were discharged from the payment of the subsidies hitherto granted in convocation. Though this act reserves to the clergy the right of taxing themselves in convocation if they think fit, it has never been attempted, and the clergy and the laity are now precisely on the same footing as to taxation. The clergy, instead of being represented by the lower house of convocation, are now represented in parliament in the House of Commons, not however as an ecclesiastical body, but simply as citizens; they can vote for a member in respect of their ecclesiastical freeholds, or in respect of any other qualification which they may have in common with the laity.

The decisions of the convocation of the province of Canterbury have always had great authority in that of York; and sometimes the two convocations have acted as one, either by jointly consenting, or by the attendance of deputies from the province of York at the convocation of Canterbury. One of the most important of the convocations, that in which the Constitutions and Canons Ecclesiastical were established in 1603 [CONSTITUTIONS and CANONS ECCLESIASTICAL], appears to have been only attended by deputies of the Canterbury convocation; but the king's confirmation of the canons then made extends them to the province of York. No business beyond matters of form has been done in convocation since 1741.

The practical annihilation of the convocation was a considerable change. It may be viewed as completing the victory obtained in England by the civil power over the ecclesiastical. The clergy can now make no canons which shall bind even their own body without the consent of the crown, that is, of the ministers of the crown; and it is certain that whatever canons they might make, even with the licence of the crown, would not bind the laity. In fact, the British parliament now makes canons for the clergy, as we see in the Church Discipline Act. [CLERGY.] The Anglican Church is now completely in the power of parliament, with no other weight there than the bench of bishops in the House of Lords, who may be considered as in some way representing the ecclesiastical estate.

But though the convocation has become a nullity, the practice has been continued, and continues to the present day, of summoning the clergy to meet in convocation whenever a new parliament is called; and the forms of election are gone through in the dioceses, and the meeting for the province of Canterbury is held, usually in St. Paul's Church, when the form is also gone through of electing a prolocutor or speaker. The king's writ, as already stated, is directed to the archbishops, commanding them to summon the bishops and the inferior clergy. The archbishops, in compliance with this writ, summon the bishops, and command them to summon the archdeacons and deans in their respective dioceses, and to command the chapters to elect one proctor each, and the great body of the clergy in each diocese two proctors, to represent them in the convocation. When assembled, they form two houses in the province of Canterbury, but, as stated above, only one house in the province of York. In the upper house of the convocation of Canterbury sit the bishops; in the lower, the other clergy, in all 143; viz. 22 deans, 53 archdeacons, 24 canons, and 44 proctors of the inferior clergy. It is the usual

practice for the king to prorogue the meeting when it is about to proceed to any business.

There is no convocation for Ireland.

The history of the English convocation may be collected from Gibson's Codex, and Atterbury's Rights, Powers, and Privileges of the English Convocation stated and vindicated, London, 1700; and from a Charge, delivered at a visitation of the Archdeaconry of Oxford, 1841, by Archdeacon Clarke.

The sketch of the history of convocation here given may be tolerably correct as far as it goes, and it pretends to be nothing more. The complicated and inextricable difficulties which beset every attempt to restore the convocation, or to set it to work again, are fully stated in an article in the 'Quarterly Review,' No. 150.

This article makes us acquainted with the strange fact (strange enough it seems to us, who have thus heard of it for the first time), that a parliamentary writ issues from the Petty-Bag Office [CHANCERY, p. 486] concurrently with the convocation writs from the Crown Office.

The parliamentary writs are addressed to the archbishops and bishops of England and Wales, who are commanded to attend the parliament to be holden at Westminster. The same writ also commands the attendance of the dean of the bishop's church of Canterbury, Exeter, and so forth, and the archdeacons to appear also at Westminster in their proper persons; and each chapter by one, and the clergy of each diocese by two meet proctors. A similar notice is sent to the Irish archbishops and bishops. These ecclesiastics are summoned to Westminster at the day appointed, to consent to what shall be advanced by the common counsel of the United Kingdom. According to the summons, the clergy ought to appear at Westminster as a component part of the Imperial Parliament; and the English clergy are required at the same time to appear in convocation at St. Paul's, London, for the province of Canterbury, and at St. Peter's, York, for the province of York. The parliamentary writ was no doubt the original one; and it is suggested by the writer in the 'Quarterly Review,' that the concurrent convocation writ was probably introduced to enable the clergy to save their privileges at the expense of their money. Since the convocation writs have been issued, the practice has been for the clergy to obey the writ of convocation.

CONVOY, in the military service, is a detachment of troops appointed to guard supplies of money, ammunition, provisions, &c., while being conveyed to a distant town, or to an army in the field, through a country in which such supplies might be carried off by the peasantry or by parties of the enemy. In the navy, the name is applied to one or more ships of war which are ordered to protect a fleet of merchant vessels on their voyage.

COPPER, STATISTICS OF. Copper was at first obtained in this country in small quantities in working the tin-mines in Cornwall; but about the close of the seventeenth century mines were set at work purposely for copper. The first application of the steam-engine in drawing water from copper-mines was in 1710, and the quantity of ore raised has increased with each successive improvement in the steam-engine. In 1837 the number of steam-engines employed in the copper-mines in Cornwall was 58. The produce of the Cornish mines is known with tolerable accuracy as far back as 1771, and there are accounts of the produce of other copper-mines since 1821. Improvements in the art of smelting have greatly increased the products of the mines, and ores which produce only three or four per cent. of metal are now smelted.

The number of persons employed in the copper-mines in England and Wales, in 1841, was 15,407; and the number employed in copper manufactures was 2126.

The average annual produce of the Cornish mines at different periods between 1771 and 1837, was as follows:—

1771-75,	3450 tons.
1776-80,	3310
1781-85,	3990
1796 to 1800,	5174
1801-5,	5544
1806-10,	6575
1811-15,	7181
1816-20,	7018
1821-31,	9143
1831-37,	11,637

In 1837 the value of the ore was 908,613*l.*, and the quantity of copper was 10,823 tons.

The value of the produce of all the British copper-mines is in good years about 1,500,000*l.* Four-fifths of the whole quantity is raised from the Cornish mines. The produce of the mines in Devonshire and Staffordshire was 871 tons in 1821, but it has not much exceeded 500 tons since 1827. In 1831 the mines in Anglesey produced 915 tons, which was above the average quantity. In 1843, 176 tons of ore were received from the Isle of Man. The total quantity of copper from all British mines in the following years has been as under:—

Years.	Tons.	Years.	Tons.
1821	10,288	1831	14,685
1822	11,018	1832	14,450
1823	9,679	1833	13,260
1824	9,705	1834	14,042
1825	10,358	1835	14,474
1826	11,093	1836	15,369
1827	12,326	1837	15,360
1828	12,188	1838	13,958
1829	12,057	1839	14,672
1830	13,232	1840	13,022

In the year ending 30th June, 1840, the mining and smelting operations in Cornwall and at Swansea were as follows:—

CORNWALL.

Ore raised	159,214 tons
Value	792,750*l.*
Metallic copper produced	11,056 tons
Produce per cent. of metal	7½

SWANSEA.

Ore smelted	56,285 tons
Value	674,012*l.*
Produce per cent. of metal	15
Quantity of copper	8,476 tons

Of the above, the following portion was foreign ore:—

Quantity of ore	30,367 tons
Metallic copper produced	6,510 „
Produce per cent. of metal	21⅓

The copper yielded by the British mines being more than sufficient for the use of the kingdom, a considerable quantity is exported every year, both in its unwrought and in a manufactured state.

The quantity of British copper retained yearly for use, on an annual average of each decennial period during the present century, is calculated by Mr. Porter ('Progress of the Nation,' iii. p. 92), as follows:—

1801-10,	3694 tons.
1811-20,	3472
1821-31,	4912
1831-40,	6290

The exports since 1820 have been:—

Years.	Tons.	Years.	Tons.
1820	6,094	1831	8,530
1821	6,271	1832	9,730
1822	5,683	1833	7,811
1823	5,326	1834	8,886
1824	5,305	1835	9,111
1825	3,931	1836	8,076
1826	4,799	1837	7,129
1827	7,171	1838	7,459
1828	6,206	1839	7,687
1829	7,976	1840	5,926
1830	9,157		

In the accounts of English produce and manufactures exported, the Custom-House statements include brass and copper manufactures together: the total quantity and declared value of these shipments averaged as follows for each year in the four years ending 1831 and 1835:—

Years.	Cwts.	£
1828-31	165,222	790,405
1832-35	213,627	964,321

From 1838 to 1844 inclusive the quantity and declared value of the exports have been as under:—

Years.	Cwts.	£
1838	265,204	1,221,737
1839	272,141	1,280,506
1840	311,153	1,450,464
1842	395,210	1,810,742
1843	364,128	1,644,248
1844	. . .	1,735,528

The quantities and declared value of the principal shipments in 1842 were as follows:—

	Cwts.	£
France	155,848	682,833
East India Company's Territories & Ceylon	109,107	514,945
Holland	36,934	163,988
United States of North America	19,097	89,952
Italy and the Italian Islands	13,813	62,691
Belgium	13,166	57,480

And the remainder to forty other States and countries.

In the year 1843 the exports of British copper consisted of 8463 tons unwrought, in bricks, pigs, &c., 66 tons of coin, 8386 tons of sheet, nails, &c., 6 tons of wire, 598 tons of wrought copper; making a total of 17,515 tons.

Within the last twenty years a considerable quantity of copper-ore has been brought to England for the purpose of being smelted and re-exported in the metallic state. These importations amounted only to 2 cwts. in 1825, and have gradually but rapidly increased as follows:—

Years.	Tons.	Years.	Tons.
1826	64	1836	18,491
1827	32	1837	19,465
1828	334	1838	30,000
1829	1,212	1839	30,195
1830	1,436	1840	41,925
1831	2,545	1841	34,150
1832	3,955	1842	48,546
1833	5,931	1843	54,391
1834	6,987	1844	55,720
1835	13,945		

The duty on copper-ore is paid after smelting, but it is paid upon the ore: in 1843, 64,445 tons of ore produced 11,640 tons of metal. Since July, 1842, the duty has been charged according to the following proportions of metal which the ore contains.

Ore containing	Tons. in 1843.	Duty per ton.
Under 15 per cent	5,460	£3 3 0
15 and under 20	10,339	4 14 6
Above 20 . .	48,630	6 6 0

The duty on copper-ore from British possessions is 21*s.* per ton, but only 14 tons from Australia were imported. Copper-mines have been recently discovered in South Australia, which, it is said, are likely to prove very productive. In 1843 we received 31,683 tons of ore from Cuba; 19,829 from Chili; 1200 from Mexico; 1151 from the United States of North America; and smaller quantities from Peru, the British West Indies, Italy, Spain, and some other places.

The value of the foreign copper-ore imported in 1843 was about 900,000*l.*, the freights varied from 2*l.* 10*s.* to 6*l.* per ton. It is a valuable return cargo to vessels trading to the Pacific, Australia, and especially the western coast of South America, which affords few commercial products. A high duty on such a commodity is more especially impolitic, as it may be an inducement to other countries to commence smelting operations on a large scale, and since the increase of duty in 1842 this has taken place in France, Holland, and the United States. Any diminution in the foreign supply, which now amounts to nearly three-sevenths of the copper made in Great Britain, would be seriously felt by the smelters and manufacturers of this country. Although the import of foreign copper is now so much greater than it was ten years ago, the price of British ore has not fallen, but is at present higher than it was in 1832, and the supply from our own mines has also steadily increased.

COPYHOLD, a term in English law applied to lands held by what is called tenure by copy of court roll, the nature of which is thus described by Littleton (§ 73, 4, 5): "Tenant by copy of court roll is as if a man be seised of a manor, within which manor there is a custom which hath been used time out of mind of man, that certain tenants within the same manor have used to have lands and tenements to hold to them and their heirs in fee-simple or fee-tail, or for term of life, at the will of the lord, according to the custom of the same manor. And such a tenant may not alien his land by deed, for then the lord may enter as into a thing forfeited unto him. But if he will alien his land to another, it behoveth him after the custom to surrender the tenements in court into the hands of the lord to the use of him that shall have the estate. And these tenants are called tenants by copy of court roll, because they have no other evidence concerning their tenements, but only the copies of court rolls." From this it appears that the title to copyhold lands is not only modified but altogether constituted by custom; subject to the estates in them which the custom confers, they are held by the lord under the common law as part of the demesnes of his manor. For these customary estates were in their

origin mere tenancies at will, though by long usage they have in many instances acquired the character of a permanent inheritance, descendible (except where otherwise modified by custom) according to the rules of the common law; and as tenancies at will they continue to be considered in all questions relating to the *legal* as distinguished from the customary property in the land.

The origin of copyholds is involved in great obscurity. The opinion generally adopted among our lawyers and antiquarians, and supported by the authority of Littleton, Coke, Sir Martin Wright, and Mr. Justice Blackstone, is, that copyholders have gradually arisen out of the villeins or tenants in villeinage who composed the mass of the agricultural population of England for some centuries after the Norman conquest, through the commutation of base services into specific rents either in money or money's-worth. (See Co. Litt., 58 a—61 a; Blackstone's *Comm.*, ii. p. 92; Wright *on Tenures*, 3rd edit., p. 215. See also Hallam's *Middle Ages*, vol. iii., p. 254.) [VILLEINAGE.]

Although the change in the condition of these classes of persons was accomplished gradually, it seems in the middle of the thirteenth century to have begun to assume a more decided character. There are proofs of as early a date as the reign of Henry III. of a limitation of the services of villeins to certain specified acts which were recorded in the lord's book. The descendants of persons so privileged began to claim a customary right to be entered on the court roll on the same terms as their predecessors, and, in process of time, prevailed so far as to obtain a copy of the roll for their security. It is said in the year-book of the 42nd of Edw. III. to be "admitted for clear law that if the customary tenant or copyholder did not perform his services, the lord might seize his land as forfeited," which seems to imply a permanent interest in the copyholder, so long as he performed the services. This view of the law is confirmed by Britton in a passage cited by Lord Coke (Co. Litt., 61 a) and was adopted by the judges in Edward IV.'s time, who held that a copyholder might maintain an action of trespass against the lord for dispossession.

The two great essentials of copyhold tenure, according to Blackstone, are: 1. That lands be parcel of and situate within that manor under which they are held; and 2, That they have been demised or demisable by copy of court roll immemorially. "For immemorial custom," says that author, ii. p. 96, "is the life of all tenures by copy; so that no new copyhold can, strictly speaking, be granted at this day."

The burdens to which a copyhold tenure is liable in common with free tenures, are fealty, services, reliefs, and escheats; besides which it has certain liabilities peculiar to itself in the shape of heriots and fines. A heriot is the render of the best beast or other chattel (as the custom may be) to the lord on the death of a tenant.

Of fines, some are due on the death of a tenant, and others on the alienation of the land; they are sometimes fixed by the custom, sometimes arbitrary; but in the latter case it is an established rule of law that the lord cannot demand by way of fine upon the descent or alienation of the land more than the amount of two years, improved value of the property, after deduction of the quit-rents to which it is liable. The ordinary mode of alienating a copyhold estate in fee-simple is by *surrender and admittance*, which is effected in the following manner:—The copyholder appears in court and professes to surrender or deliver up his land to the lord (either in person, or, which is more usual, as represented by his steward), expressing the surrender to be to the use of A and his heirs; and thereupon A is *admitted* tenant of the land to hold it to him and his heirs at the will of the lord according to the custom of the manor. He then pays a fine, and also (if required) does fealty. All these circumstances, or at least the surrender and admittance, are entered on the court rolls; and the new tenant, paying his fees to the steward, receives a copy of this fundamental document of his title. Surrenders are made in various forms, as by the delivery of a rod, glove, or other symbol, to the steward or other person taking the surrender.

Surrenders may also be made to the lord in person out of court; to the steward; and by special custom to the lord's bailiff; to two or three copyholders, or into the hands of a tenant in the presence of other persons. But when a surrender is taken out of court it must be presented by the homage or jury of copyholders at the next general court, except where a special custom authorizes a presentment at some other court. Admittances also may be made out of court and even out of the manor.

The words in the admittance "to hold at the will of the lord" are characteristic of those customary estates to which the term copyhold is in ordinary legal language exclusively appropriated, in contradistinction to what are sometimes called "customary freeholds" (which estates are very common in the north of England), and ancient demesne lands. These are all included under the term copyhold in the statute 12 Car. II. c. 24, which abolished all the old tenures in England except common soccage, copyhold, and some other specified tenures. Though customary freeholds and ancient demesne lands for the most part pass by surrender and admittance, the admittance is expressed to be "to hold according to the custom of the manor."

The Statute of Entails (13 Edw. I.), commonly called the Statute of Westminster the 2nd, does not extend to copyholds; but in most manors a custom of entailing copyholds has prevailed. These entails might formerly be barred by a proceeding in the lord's court, analogous to a common recovery, or, in the absence of a custom authorizing such a proceeding, by a mere surrender. And now by statute (3 & 4 Wm. IV. c. 74, § 50-54 inclusive) entails of copyholds may be barred by assurances made in pursuance of the provisions of that act. It is a general rule that no statute relating to lands or tenements in which those of a customary tenure are not expressly mentioned, shall be applied to customary estates, if such application would be derogatory to the customary rights of the lord or tenant. Hence neither the Statute of Uses (27 Henry VIII. c. 10), nor the Statutes of Partitions (31 Henry VIII. c. 1, and 32 Henry VIII. c. 32), nor the statute enabling persons having certain limited interests in lands to grant valid leases (32 Henry VIII. c. 28), nor any of the local Registry Acts, are applicable to copyholds.

Copyholds now descend to the heir-at-law according to the rules that regulate the descent of all other kinds of land, under the 3 & 4 Wm. IV. c. 106.

The Statutes of Wills (32 Hen. VIII. c. 1, and 34 & 35 Hen. VIII. c. 5) do not include copyholds, and therefore it was formerly necessary, in order to enable a person to dispose of copyholds by will, that he should first have surrendered them to the use of his will, as it was called. This ceremony was rendered unnecessary in most cases by the 55 Geo. III. c. 192. This statute, however, did not apply to customary freeholds, nor to cases where there was no custom to surrender to the use of a will, nor did it extend to estates of customary tenure not being copyhold, though the distinction between them is little more than nominal. There were also some customary freeholds which were neither devisable at law nor capable of being conveyed or surrendered to the use of a will; and it was even thought doubtful whether a custom against a surrender of copyholds to the use of a will might not be supported. But though a surrender to the use of a will might be dispensed with, admittance of the devisor before the date of the will was necessary in all cases except that of a person claiming as heir of the person last admitted. In the case of a surrender the legal estate remained in the surrenderor till the surrenderee was admitted, and therefore the surrenderee had nothing to dispose of but his right to admittance, which could not be devised. Also the 12th section of the Statute of Frauds, whereby estates *pur auter vie* were made devisable, did not extend to copyholds. By the 1st section of the 1 Vict. c. 26, the last statute which relates to wills and testaments, the 55 Geo. III. c. 192, and the above-mentioned enactment of the Statute of Frauds, are repealed; and by the 3rd section the power of disposition by will is extended to customary freeholds and tenant right estates, and all estates of a customary or copyhold tenure,

without the necessity of any surrender or admittance, and notwithstanding the want of a custom to devise a surrender to the use of a will; and to all estates *pur auter vie*, whether of customary freehold, tenant right, customary, or copyhold tenure. The 4th section provides that where any real estate of the nature of customary freehold, or tenant right, or customary or copyhold, might by the custom of the manor of which the same is holden, have been surrendered to the use of a will, and the testator shall not have surrendered the same, no person claiming to be entitled under his will shall be entitled to be admitted, except upon payment of all such stamp-duties, fees, and sums of money as would have been due in respect of the surrender of such estate, or the presentment, registering, and enrolment of such surrender to the use of his will. And also, that where the testator, being entitled to admission to any real estate, and upon such admission to surrender the same to the use of his will, shall not have been admitted thereto, no person claiming to be entitled to such real estate in consequence of such will shall be entitled to admission, except on payment of all such stamp-duties, fees, fine, and sums of money as would have been due in respect of the admittance of the testator to such real estate, the surrender to the use of his will, the presentment, registering, or enrolment of such surrender; all such stamp-duties, fees, fine, or sums of money, to be paid in addition to the stamp-duties, fees, fine, or sums of money due on the admittance of the person so claiming to be entitled to such real estate.

By the 5th section, when any real estate of the nature of customary freehold, or tenant right, or customary, or copyhold, is disposed of by will, the lord of the manor, or reputed manor, of which such real estate is holden, or his steward, or the deputy of such steward, is to cause the will by which such disposition is made, or an extract thereof, to be entered on the Court Rolls; and when any trusts are declared by the will, it is not to be necessary to enter the declaration of such trusts, but it is to be sufficient to state in the entry on the Court Rolls that such real estate is subject to the trusts declared by the will; and when such real estate could not have been disposed of by will, except by virtue of the act, the same fine, heriot dues, duties, and services are to be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of such real estate. And the lord is, as against the devisee, to have the same remedy for recovering and enforcing such fine, heriot dues, duties, and services as he is entitled to against the customary heir in case of a descent.

By the 6th section, if no disposition by will be made of any estate *pur auter vie* of a freehold nature, the same is to be chargeable in the hands of the heir, if it come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there be no special occupant of any estate *pur auter vie*, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it is to go to the executor or administrator of the party that had the estate by virtue of the grant; and if the estate come to the executor or administrator either by reason of a special occupancy or by virtue of the act, it is to be assets in his hands, and to go and be applied and distributed in the same manner as the personal estate of the testator or intestate. By the 26th section a general device of the testator's lands is to include copyholds, unless a contrary intention appear by the will; which is an alteration of the old rule whereby copyholds did not pass under a general device of "lands, tenements, and hereditaments," or other general words descriptive of real estate, unless the copyholds had been surrendered to the use of the will, or the testator had no freehold lands upon which it could operate. And besides the above-mentioned changes relating peculiarly to copyholds, all the other enactments of the act, including that which prescribes the formalities to be observed in making a will, are applicable to estates of copyhold or customary tenure.

Copyholds cannot be seized upon an outlawry, and not being expressly mentioned in the Statute of Westminster

which introduced the elegit, could not be taken under it upon a judgment against the copyholder; but by the 11th section of the 1 & 2 Vict. c. 110, copyholds are made subject to execution by judgment creditors in the same manner as freeholds.

Copyhold lands belonging to traders have been subjected to the operation of the bankrupt laws (stat. 6 Geo. IV. c. 16, § 68 and 69; 3 & 4 Wm. IV. c. 74, § 66); and by stat. 3 & 4 Wm. IV. c. 104, customaryhold and copyhold lands which a man has not by his last will charged with or devised subject to the payment of his debts, are rendered assets to be administered in a court of equity for the payment both of specialty and simple contract debts. Copyholds are not liable (except by special custom) to the incidents of curtesy or dower. The latter, where authorized by the custom, is called the widow's "free bench." These estates, being considered continuations of that of the deceased tenant, are perfected without admittance. A purchaser or devisee of copyholds has an incomplete title until admittance, but the customary heir is so far legal owner of the land before admittance, that he can surrender it or maintain an action of trespass or ejectment in respect of it. The lord may by a temporary seizure of the land compel an heir or devisee to come in and be admitted; and he is himself compellable by a mandamus of the Court of King's Bench to admit any tenant, whether claiming by descent or otherwise.

By the general custom of all manors, every copyholder may make a lease for any term of years, if he can obtain a licence from the lord, and even without such licence he may demise for one year, and in some manors for a longer term; and the interest thus created is not of a customary nature, but a legal estate for years, of the same kind as if it had been created out of a freehold interest. But every demise without licence for a longer period than the custom warrants, and in general, every alienation contrary to the nature of customary tenure, as a feoffment with livery of seisin, is followed by a forfeiture to the lord. A copyhold estate may also be forfeited by waste; as by cutting down timber, or opening mines, when such acts are not warranted by the custom. In the absence of such special custom, the general rule seems to be that the right of property both in trees and mines belongs to the lord, while only a possessory interest is vested in the tenant; but neither can the lord without the consent of the tenant, nor the tenant without the licence of the lord, cut down trees, or open and work new mines. In like manner forfeiture may be incurred by an inclosure or other alteration of the boundaries of an estate, refusal to attend the customary courts, or to perform the services, or to pay the rent or fine incident to the tenure. The 9th section of the 1 Wm. IV. c. 65, protects infants, lunatics, and married women from the last-mentioned cause of forfeiture. In case of felony or treason being committed by a copyholder, the lord has the absolute benefit of the forfeiture, unless it has been expressly provided otherwise by act of parliament. In all cases of forfeiture the lord may recover the forfeited estate by ejectment, without prejudice to the rights of the copyholders (if any there be) in reversion or remainder. He may waive the forfeiture by a subsequent act of recognition of the tenure. If he does not take advantage of the forfeiture for twenty years, his right to do so is barred by the act for the Limitation of Actions, 3 & 4 Wm. IV. And if he neglect to take advantage of the forfeiture in his life-time, his heir cannot avail himself of it.

The lord may also become entitled to a customary tenement by escheat for want of heirs. Formerly where a copyhold was surrendered to a mortgagee and his heirs, and no condition was expressed in the surrender, and the mortgagee died intestate and without an heir, the lord was entitled to enter for escheat To remedy this, the 4 & 5 Wm. IV. c. 23, enacts that where a trustee or mortgagee of lands of any tenure whatsoever dies without an heir, the Court of Chancery may appoint a person to convey or surrender the legal estate for the benefit of the persons entitled to the equitable interest in the property, and provides against the future escheat or forfeiture of lands

by reason of the attainder or conviction of trustees or mortgagees who have no beneficial interest therein.

If the lord (having acquired a copyhold tenement by forfeiture, escheat, or surrender to his own use) afterwards grant it away by an assurance unauthorized by the custom, the customary tenure is for ever destroyed. And if he makes a legal conveyance in fee-simple of a copyhold tenement to the tenant, the tenement is said to be enfranchised, that is, converted into freehold.

Copyholders were till very lately incapable of serving on juries, or voting at county elections of members of parliament; but the former disability was removed by 6 Geo. IV. c. 50, § 1, and the latter by the 2 & 3 Wm. IV. c. 45, § 19. As to the qualification for killing game under 22 and 23 Chas. II. c. 25, § 3, there seems to be no distinction between freeholders and copyholders.

There are no lands of a copyhold tenure in Ireland.

Still greater changes in the nature of estates of copyhold and customary tenure are gradually taking place under the provisions of the stat. 4 & 5 Vict. c. 35, the principal objects of which are—1. The commutation of certain manorial rights in respect of lands of copyhold and customary tenure; 2. The facilitating the enfranchisement of such lands; and 3. The improvement of such tenure.

1. The enactments with respect to the commutation of manorial rights are partly compulsory and partly permissive. All rents, reliefs, and services (except service at the lord's court), fines, heriots, or money payments in lieu thereof, the lord's rights in timber, and in mines and minerals, may be made the subject of compulsory commutation upon an agreement being entered into between the lord and the tenants of any manor at a meeting called in the way prescribed by the act. As soon as this agreement receives the signatures of the lord or tenants whose interests are not less than three-fourths in value of such manor and lands, and of three-fourths in number of the tenants, it becomes (on receiving the confirmation of the commissioners appointed under the act) compulsory on the lord and all the tenants of such manor. Powers are likewise given to any lord, and any one or more of the tenants, to effect by agreement between themselves a commutation, wholly voluntary, of the above-mentioned rights or any other rights of the lord, such as escheats, waifs, fairs, markets, &c. The lord's rights may be commuted either for an annual rent-charge and a small fixed fine not exceeding 5*s*. on death or alienation, or for the payment of a fine on death or alienation or any other contingency, or at any fixed period or periods to be agreed upon between the parties: such annual rent charge or such fine, as the case may be, if exceeding the sum of 20*s*., to be variable according to the price of corn, upon the principle of tithe rent-charges. After the completion of the commutation, the lands are to continue to be held by copy of Court Roll, and to pass by surrender and admittance or other customary mode of conveyance. but the customs of Borough-English, or Gavelkind (except in Kent), or any other customary mode of descent or custom relating to dower, freebench, or curtesy to which the lands may have been subject, are to cease, and they are to be thenceforth subject to the general law of descent, dower, and curtesy relating to lands of freehold tenure.

2. For the purpose of facilitating the enfranchisement of copyhold lands, the act enables lords of manors, whatever may be the extent of their interests, with the consent of the commissioners under the act, to enfranchise all or any of the lands holden of their manors, in consideration of any sum or sums of money payable forthwith or at a future time, according to agreement: and tenants, whatever be the extent of their interests, are in like manner enabled, with the consent of the commissioners, to accept of enfranchisement on the terms agreed upon. After the completion of any such enfranchisement, the lands included in it are to become of freehold tenure, subject to the consideration agreed upon for the enfranchisement, but without prejudice to the tenant's right of common and existing limitations affecting the land.

3. The act contains a clause applicable to cases where commutation or enfranchisement has been effected, and there has

been a reservation of the lord's right in mines and minerals, enabling the tenants to grant to the lord such rights of entry and way, and such other easements, as may be necessary to the enjoyment of the reserved rights. [ENFRANCHISEMENT.]

It also, after stating the doubts entertained as to the power of the courts of equity to decree a partition of lands of copyhold or customary tenure, confers that power to be exercised according to the practice of the court in freehold cases. Formerly a customary court could not be legally constituted unless two or more tenants were present to form the homage; all acts of court were by usage required to be matters of presentment by the homage; and in a great majority of manors grants could not be made nor admissions taken except at courts held within the manors. A remedy is provided for these inconveniences by clauses giving power to hold customary courts though there should be no tenant of the manor holding by copy, or though no such tenant, or not more than one such tenant, should be present; enabling lords and stewards to make grants and take admissions out of court and out of the manor: and requiring the lord forthwith, upon payment of the usual fees, to enter on the rolls all such surrenders, deeds, wills, grants, and admissions as would formerly have required the formality of a court to authorize their entry or to give them legal effect; and also declaring that no presentment of a surrender, will, or other instrument shall be essential to the validity of any such admission. But the operation of these provisions is restrained by a clause providing that wastes and commons are not to be granted or inclosed without the consent of the homage at a court duly constituted.

The act also contains a provision extending the powers of the lords and tenants of certain manors to dispose of and divide ancient tenements held of the manor, subject to a due apportionment of the ancient rent where a tenement is sold in parcels.

There are likewise numerous provisions in the act for defining boundaries, settling disputes, providing for cases of disability, payment of expenses, &c., similar to those in the Tithe Commutation Act, 6 & 7 Wm. IV. c. 71.

The act applies partially to the Duchy of Lancaster, but not otherwise to Crown lands, and not at all to the Duchy of Cornwall.

COPYRIGHT, or, as it was formerly termed, Copy, has been defined by Lord Mansfield, "to signify an incorporeal right to the sole printing and publishing of somewhat intellectual, communicated by letters." By this "somewhat intellectual" is to be understood something proceeding from the mind of the person by whom, or through whom, such a right is claimable. Yet, although mere republications of the compositions of others are no subject for copyright, it is not limited to such productions as contain new or original ideas. Translations both from ancient and modern languages, and notes and additions to existing works, are similarly protected. Further, a right of copy attaches to the authors of ideas expressed by other symbols as well as letters, to musical composers for example.

The origin of copyright must be sought in the general opinion of its justice and expediency. It has been supposed that a common-law right of copy existed in England previously to any statute on the subject. As a legal proposition, however, this cannot be supported by any proper and direct proof of a fair judicial decision before the passing of the first statute relating to copyrigt, 8 Anne, c. 19; inasmuch as it never appears to have been directly controverted up to that time. But, in the absence of positive authority, it may be fairly inferred, from the old charters of the Stationers' Company, and much more from their registers, whence it appears that some thousands of books, even as early as the times of Elizabeth, passed from one owner to another by descent, sale, and assignment; from acts and ordinances of parliament which imply a recognition of it by the nature of their provisions respecting printing; and from decrees of the Star-chamber, which, though not binding precedents, are evidence of the opinion of many learned men as to the then state of the law. The non-existence of express decisions on the point is accounted for

down to 1640 by the necessity of obtaining a licence prior to the printing of anything, so that authors had no occasion to apply to civil tribunals for protection, as none but themselves and those claiming under them were so licensed, and he who printed a book without this was subject to enormous penalties.

It has hardly been controverted in the various arguments upon this common-law right of copy that literary compositions in their original state, and the right of the publication of them, are the exclusive property of the author. The argument has been that this property was put an end to by publication: and yet without publication it is useless to the owner, because it is without profit, and property without the power of use or disposal is not property. In that state it is lost to society as a means of improvement, as well as to the author as a means of gain. Publication is therefore the necessary act and the only means to render such a property useful to the public and profitable to the owner. If, says Lord Mansfield, the copy which belonged to the author before publication does not belong to him after, where is the common law to be found which says there is such a property before? All the metaphysical subtleties from the nature of the thing may be equally objected to the property before. It is equally detached from the manuscript or any physical existence whatsoever. There is in fact nothing in the act of publication to vary the nature of the right, so that what is necessary to make a work useful and profitable should be taken as destructive at once of an author's confessed original property against his expressed will. It has accordingly been the almost unanimous opinion of the high authorities who were called on to decide the point, that by the common law of England authors were entitled to copyright, and as there was nothing in statute or custom to determine it, or distinguish this from other species of property, that such right was once perpetual. The arguments for the contrary opinion are collected in the judgment of Mr. Justice Yates in the case of Millar *v.* Taylor, 4 Burrow, p. 2303. It must be observed that this argument in favour of a common-law copyright is founded on the assumption that copyright is property independently of written law; a proposition which may be denied.

§ From the above premises arose the question, after the passing of the first statute respecting literary property in 1710, whether by certain of its provisions this perpetual copyright at common law was extinguished for the future. After some less important decisions in the negative on motion in the Court of Chancery and elsewhere, the question was argued before the Court of King's Bench, during the term, when Lord Mansfield presided, in 1769. The result was a decision in favour of the common-law right as unaltered by the statute, with the disapproval, however, of Mr. Justice Yates. Subsequently, in 1774, the same point was brought under the consideration of the House of Lords, and the decision of the court below was reversed by a majority of six judges in eleven, as Lord Mansfield, who adhered to the opinion of the minority, declined to interfere: it being very unusual, from motives of delicacy, for a peer to support his own judgment on appeal to the House of Lords. It is somewhat remarkable, that although this could hardly be termed a decision, as the judges were in point of fact divided equally, it has since been held so important as a precedent and sustained in so many subsequent cases, that it must now be considered as settled law that perpetual copyright is put an end to by the statutes.

The universities of Cambridge and Oxford protected themselves from the consequences of this decree in the case of Donaldsons and Beckett, by obtaining from parliament, in 1775, the following year, an act for enabling the two universities in England, the four universities in Scotland, and the several colleges of Eton, Westminster, and Winchester, to hold in perpetuity their copyright in books given or bequeathed to the said universities and colleges for the advancement of useful learning and other purposes of education. This protection, sanctioned by penalty and forfeiture, so long as such books are printed at the presses of the universities and colleges respectively, is still enjoyed,

unaffected by the general statutes on the subject; and a similar protection is extended to the university of Dublin by 41 Geo. III. c. 107.

The chief provisions of the 8 Anne, c. 19, entitled 'An act for the encouragement of learning, by vesting the copies of printed books in the authors or purchasers of such copies during the times therein mentioned,' as regards the effecting of that purpose, were, that the authors of books already printed, and those claiming under the authors, should have the sole right and liberty of printing them for a term of twenty-one years and no longer; and that the authors of books thereafter to be printed, and their assigns, should have the same right for fourteen years and no longer. The last clause of the statute directed that after the expiration of these fourteen years the same right should return to the authors, if living, for another fourteen years. The persons infringing these provisions were to be punished by forfeiture of the pirated book to the proprietor, and a penalty of one penny for each sheet, one-half to go to the crown and the other half to the informer, provided always the title to the copy of the book had been duly entered with the Stationers' Company.

The 41 Geo. III. c. 107, which extended the same law to Ireland, gave a further protection to authors and their assigns by action for damages and double costs, and raised the penalty per sheet to three pence, to be divided in the same way.

The 54 Geo. III. c. 156, entitled 'An act to amend the several acts for the encouragement of learning by securing the copies and copyright of printed books to the authors of such books and their assigns,' enacted, that the author of any book which should be published after the passing of the act, and his assigns, should have the sole liberty of printing and reprinting such book for the full term of twenty-eight years from the day of publication, and, if the author should be living at the end of that period, for the residue of his natural life; while with regard to books at that time already published, of which the authors were then living, and in which copyright had not expired, if the authors should die before the expiration of fourteen years from publication, their representatives should have the benefit of the second fourteen years; and if the authors should survive till twenty-eight years from publication, they themselves should have the benefit for the remainder of their lives; the rights of all assigns being saved in both cases. The penalties for the infringement of copyrights were the same as in the former statutes, but with the limitation that all legal proceedings under the act must be commenced within one year.

The act 5 & 6 Vict. c. 45 (Lord Mahon's Act), entitled 'An act to amend the law of copyright,' and having for its preamble, "Whereas it is expedient to amend the law relating to copyright, and to afford greater encouragement to the production of literary works of lasting benefit to the world," is the act now regulating literary property. It repeals the three before-mentioned acts, and enacts that, in every book published in the life-time of the author, after the passing of the act (1st of July, 1842), the author and his assigns shall have copyright for the term of the author's life, and for seven years after his death, or if these seven years expire before the end of forty-two years from the time of publication, then for such period of forty-two years; while for books previously published, in which copyright still subsisted at the time of the passing of the act, the copyright should be continued for the full term provided in the cases of books thereafter published, except in cases where the copyright should belong wholly or in part to a person other than the author, "who shall have acquired it for other consideration than that of natural love and affection." In these excepted cases, however, the author, or his personal representative, and the proprietor or proprietors of copyright may agree, before the expiration of the subsisting term of copyright, to accept the benefits of the act: and on a minute of such agreement being entered in a book of registry directed to be kept at Stationers' Hall, the copyright will be continued, as in other cases, for the author's life and seven years after his death, or for forty-two years from the time of publication, and will be the pro-

perty of the person or persons specified in the minute. The copyright of a book published after the author's death is to endure for forty-two years from the time of publication, and to belong to the proprietor of the manuscript from which it is first published, and his assigns. With regard to encyclopædias, reviews, magazines, periodical works, or works published in a series of books or parts, or any book in which the publisher or projector shall have employed persons to write, on the terms that the copyright shall belong to himself, the copyright shall be in the publisher or projector, after he has paid for it, in the same manner and for the same term as is given to authors of books, except only in the case of essays, articles, or portions forming part of and first published in reviews, magazines, or other periodical works of a like nature, the right of publishing which separately shall revert to the authors at the end of twenty-eight years after publication, for the remainder of the term given by this act; and during these twenty-eight years the publisher or projector shall not have the right to publish any such essay, article, or portion separately, without the consent of the author or his assigns.

The act provides, at the same time, against the suppression of books of importance to the public, by empowering the judicial committee of the Privy Council, on complaint made to them that the proprietor of the copyright in any book, after the death of its author, refuses to republish or allow the republication of the same, to license the complainant to publish the book, in such manner and subject to such conditions as the Privy Council may think fit.

The remedies provided by this act for infringement of copyright are, an action for damages (in which the defendant is required, on pleading, to give notice to the plaintiff of the objections to the plaintiff's title on which he means to rely), and a power given to the officers of customs and excise to seize and destroy all foreign reprints of books in which copyright exists, with a penalty on the importer (if he be not the proprietor of the copyright) of 10*l.*, and double the value of every copy of any book imported, on conviction before two justices of the peace; 5*l.* of the penalty to go to the officer of customs or excise who shall procure the conviction, and the remainder to the proprietor of the copyright.

The act provides that a book of registry be kept at Stationers' Hall, where entries may be made of proprietorships of copyright, assignments thereof, licences of the judicial committee, and agreements as to copyrights subsisting at the time of the passing of the act, on payment in each case of a fee of 5*s.* The entry of proprietorship of copyright in this book does not affect copyright; but no action can be brought for infringement of copyright, nor any other legal proceedings taken, unless the proprietorship of copyright has been entered. The entry of an assignment in the registry book is to all intents and purposes an effectual assignment. § 13. Certified and stamped copies of entries in the registry book are to be evidence in all courts of justice, and are to be taken as *primâ facie* proof of copyright. The making of a false entry in the registry book, or the production in evidence of any paper falsely purporting to be the copy of an entry therein, is made a misdemeanor. Persons thinking themselves aggrieved by any entry in the registry book, may apply to a court of law in term time, or a judge in vacation, for an order to vary or expunge such entry; and such court or judge may make an order for varying, expunging, or confirming such entry, with or without costs.

It has been said that the exclusive property of authors in their manuscripts has always been recognised by the law. But as this principle only prevented the printing or circulating copies of them without the licence of the owner, it has been found necessary to provide for the peculiar protection of the authors of dramatic and musical compositions. The 3 Will. IV. c. 15, entitled 'An Act to amend the Laws relating to Dramatic Literary Property,' and known as Sir Bulwer Lytton's act, after reciting the 54 Geo. III. c. 156, provided that the author of any dramatic piece, not hitherto printed or published by authority of him or his assigns, should have as his property the sole

liberty of representing it, or causing it to be represented, at any place of dramatic entertainment; and the author or assignees of any such work, printed and published within ten years before the date of the act, should have the same privilege, for twenty-eight years from publication, and for the remainder of the author's life, if he lived longer; the penalty for violating these enactments to be enforced by action for damages, with double costs, to be brought within twelve months from the commission of the offence. The 5 & 6 Vict. c. 45, has extended the term of the sole liberty of representing dramatic pieces to the period provided by that act for the copyright of books, and gives the same protection to the authors of musical pieces and their assigns. The remedies provided by the 3 Will. IV. c. 15, in the case of dramatic pieces are confirmed by the 5 & 6 Vict. c. 45, and extended to musical pieces. The 5 & 6 Vict. c. 45, also enacts that no assignment of the copyright of any book consisting of a dramatic piece or musical composition shall convey the right of representing or performing such dramatic piece or musical composition, unless an entry, expressing the intention that such right should pass by the assignment, be made in the registry book at Stationers' Hall.

There are certain works excepted from the benefit of the law of copyright from the nature of their contents. Such are, all publications injurious to morality, inimical to Christianity, or stimulating, either as libellous or seditious, to a breach of the peace. This must however be understood of their general tenor, and not of isolated passages. As far as a rule on the subject can be laid down, it is, that any work containing matter for which a public indictment or private prosecution could be sustained is not protected by the law, but may be pirated by other parties at pleasure, who, if sued for penalties under the act, are allowed to give in evidence the nature of the composition which they have published, in order to defeat the action. This is a remarkable exception to the general rule of law, that none shall take advantage of his own wrong; and its operation is quite as remarkable, the effect of the rule having often been to disseminate more widely that which the law has declared not to merit protection.

The protection given to authors by the statute of copyright is coupled with the condition of presenting five copies of every book to public libraries. A copy of every work, and of every second or subsequent edition which contains any additions or alterations, bound, sewed, or stitched together, and on the best paper on which the same shall be printed, is to be delivered at the British Museum within one month after its first publication, if it is published within the bills of mortality, or within three months if published in any other part of the United Kingdom, or within twelve months if published in any other part of the British dominions; and a copy of every work, or second or subsequent edition, containing additions and alterations, on the paper of which the largest number of copies shall be printed for sale, in the like condition as the copies prepared for sale by the publisher, is to be delivered, if demanded, within twelve months after publication, within one month after demand made, at Stationers' Hall, for the Bodleian Library at Oxford, the Public Library at Cambridge, the Library of the Faculty of Advocates at Edinburgh, the Library of Trinity College, Dublin, under penalty of forfeiting the value of the copy of each book or edition not delivered, and a sum not exceeding 5*l.*, to be recovered by the Librarian, or other officer properly authorised, of the Library to which the book should have been delivered, on conviction before two justices of the peace for the county or place where the publisher resides, or by action of debt in any Court of Record in the United Kingdom. Formerly, under the 54 Geo. III. c. 156, an author was obliged to give eleven copies of his work to public libraries. The 6 & 7 Will. IV. repealed the 54 Geo. III. c. 156, so far as related to the delivering of copies to the four universities of Scotland, Sion College, and the King's Inns, Dublin, compensation being given to these institutions upon an estimate of the annual value of books supplied on an average of three years, ending the 30th of June, 1836.

Besides the special copyrights of the universities secured to them as before

mentioned by statute, there still exist certain prerogative copyrights attaching to the owners in perpetuity. Of these the chief belong to the king, which were more numerous and considerable formerly than at present. Many are now quite obsolete, such as those of almanacs, law-books, and Latin grammars; and others very questionable, such as that of the exclusive right of the universities of Oxford and Cambridge, and the king's printer in England and in Scotland, to print the English translation of the Bible. The king has a prerogative copyright in the liturgy and other services of the church, in proclamations, orders in council, and other state papers, and in the statutes. It has been decided, that the University of Cambridge shares by letters patent in the king's prerogative of printing acts of parliament. The House of Lords also exercises an exclusive privilege, somewhat fallen into disuse, of publishing its own proceedings as the supreme court of judicature.

The modes of legal proceeding to prevent or punish the infringement of copyright, or as it is more usually termed, piracy, are by action for damages; or more commonly by obtaining an injunction in equity to prohibit the unlawful publication, which affords immediate and summary redress. This is always granted where the legal title of the plaintiff to the work is made out, and the identity of the pirated publication with his own shown to the satisfaction of the court. The proof even of an equitable title has been held sufficient to entitle the plaintiff to this relief. (Mawman v. Tegg, 2 Russ. 385.) Neither will the court refuse to grant the injunction on the ground that the matter pirated forms only a part of the publication complained of, and that what is original will be rendered useless to the defendant and the public by prohibiting its sale. But as this mode of proceeding presses very severely upon defendants, and often inflicts irreparable injury, the court, where any doubt attaches, will either refuse the injunction altogether, or grant it only on condition of the plaintiff's bringing an action immediately, to have the merits of the case decided by a jury with the smallest possible delay; and in the mean time the defendants will be ordered to keep an account of the copies sold.

The strict powers given by the 5 & 6 Vict. c. 45, have been exercised vigorously by the Custom-house authorities, and found very effectual to prevent the importation into this country of the French, Belgian, German, and American reprints of popular English works; but English authors still suffer by the circulation of these reprints abroad; and a practice so destructive of the fair profits of mental labour can only be effectually redressed by prevailing on foreign countries to extend the benefits of their own laws against literary piracy to aliens as well as native authors. Two statutes have been passed in the present reign to enable her Majesty to extend to foreigners the benefits of our laws of copyright. The first of these, 1 & 2 Vict. c. 59, was repealed by 7 Vict. c. 12, the statute which is now in force, and which was substituted in consequence of the alterations in our law of copyright. This act, entitled 'An Act to amend the law relating to International Copyright,' empowers her Majesty by order in council to enable authors of works first published in foreign countries to have copyright in the British dominions for books, prints, articles of sculpture, and the sole liberty of representing dramatic and musical pieces, for periods not exceeding those allowed by the various copyright acts for the respective classes of works when first published in this country, on conditions of registration and delivering of one copy at Stationers' Hall; but no such order in council is to have any effect unless it is stated therein, as ground for issuing the same, that reciprocal protection for British authors has been secured in the foreign country to which the order in council refers. The power given by this act has not yet been exercised in the case of any single foreign country.

A notice of the law of copyright would be incomplete which did not advert to some other compositions which receive from statute a protection analogous to that of literature. Such are engravings, etchings, and prints, maps and charts, designs for articles of manufacture, and sculpture of all kinds. These resemble written

works as regards the incorporeal right in them accruing to the author by the exertion of his mental powers in their production, but differ as they also require a good deal of his manual skill and labour, and are therefore his property upon the same general principles as any other manufacture. Such productions therefore are even more plainly entitled to the protection of the law than books.

The chief statutes affecting the copyright in the arts of designing, engraving, and etching prints, are the 8 Geo. II. c. 13, which vests it in the inventor, designer, and proprietor, for fourteen years from the first publication, and enforces this provision against any person pirating the same by forfeiture of the plate and prints, and a fine of 5*s*. for each print, to be recovered by action within three months of the discovery of the offence. The 7 Geo. III. c. 38, extends the term of copyright to twenty-eight years; and in addition to the subjects of the former statute, includes maps, charts, and plans, under the same conditions. It also extends the time of bringing an action for the penalties to six months. The 17 Geo. III. c. 57, gives the owner of the copyright a further remedy of action for damages and double costs within the same limits of time. The 6 & 7 Will. IV. extends the provisions of the previous acts to Ireland.

With regard to models, casts, and other sculptures, the 38 Geo. III. c. 71, vests the right and property in these for fourteen years in the proprietor, and gives him a special action on the case against the offender, if brought within six months. These provisions were rendered more effectual by 54 Geo. III. c. 56, by which double costs were given, and an additional term of fourteen years superadded in case the maker should be living at the end of the first term.

As to sculpture certainly, but more doubtfully as to prints, for there have been conflicting decisions on the point, the work must bear upon it the name of the maker and the date of publication to entitle it to the protection of the law.

With regard to designs for manufactured articles, the 27 Geo. III. c. 38, continued by 29 Geo. III. c. 19, and confirmed and made perpetual by 34 Geo. III. c. 23, gave the sole right of using a new pattern in the printing of linens, cottons, calicoes, and muslins for three months; and the 2 Vict. c. 13, extended this privilege to designs for printing other woven fabrics besides calicoes. The 2 Vict. c. 17, regulated copyright of designs in all articles except lace, and the articles to which the above-mentioned acts apply. But all these statutes were repealed by the 5 & 6 Vict. c. 100 (Mr. Emerson Tennent's Act), which considerably extended the periods of copyright in designs.

This act distributes articles to which designs may be applied into twelve classes:—

1. Articles of manufacture composed wholly or chiefly of any metal or mixed metals.
2. Articles of manufacture composed wholly or chiefly of wood.
3. Articles of manufacture composed wholly or chiefly of glass.
4. Articles of manufacture composed wholly or chiefly of earthenware.
5. Paper-hangings.
6. Carpets.
7. Shawls, where the design is applied solely by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics.
8. Shawls not comprised in class 7.
9. Yarn, thread or warp, the design being applied by printing, or by any other process by which colours are or may hereafter be produced.
10. Woven fabrics, composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics; except the articles included in class 11.
11. Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any other process by which colours are or may hereafter be produced upon tissue or textile fabrics, such woven fabrics being or coming within the description technically called furnitures, and the repeat of the

design whereof shall be more than twelve inches by eight inches.

12. Woven fabrics not comprised in any preceding class.

13. Lace, and any article of manufacture or substance not comprised in any preceding class.

The act gives to the proprietor of a design not previously published the sole right of applying it to ornamenting articles of the first, second, third, fourth, fifth, sixth, eighth, and eleventh classes, for three years; to articles of the seventh, ninth, and tenth, for nine months; and to articles of the twelfth and thirteenth classes for twelve months; whether such design be applicable for the pattern, or for the shape and configuration, or for the ornament of the articles, or for any two or more such purposes, and by whatever means the design may be applicable, whether by printing, or by painting, or by embroidery, or by weaving, or by sewing, or by modelling, or by casting, or by embossing, or by engraving, or by staining, or by any other means whatsoever, manual, mechanical, or chemical, separate or combined. The benefits of copyright of designs are made to depend on registration before publication. Piracy is punished by a penalty of not less than 5*l.* nor more than 30*l.*, to be paid to the proprietor of the design, and to be recovered by an action of debt or for damages, or by summary proceeding before two justices.

The right of patents in many respects resembles that of copyright. [PATENT.]

The act 'for preventing the publication of lectures without consent' (5 and 6 Wm. IV. c. 65) gives to authors of lectures the sole right and liberty of printing and publishing the same, and imposes a penalty on other persons, including printers and publishers of newspapers, who shall print, or publish, or sell them without the author's leave. The act does not extend to lectures of the delivering of which notice in writing shall not have been given to two justices, living within five miles of the place, two days at least before their delivery, or to any lecture delivered in any university, or public school or college, or any public foundation, or by individuals in virtue of any gift, endowment, or foundation. The act does not extend to sermons.

CORN-LAWS and CORN-TRADE. The history of the corn-laws and corn-trade in this country may be conveniently divided into several periods.

Period I.—*From Early Times to* 1688.

A statute of the thirteenth century, supposed to be of the date of 51 Henry III. (1266-7), shows that the average prices of wheat and other grain had become an object of attention. In 1360 the exportation of corn was prohibited by statute (34 Edw. III. c. 20). In 1393 corn might be exported by the king's subjects "to what parts that please them," except to the king's enemies. "Nevertheless," it is added, "the king wills that his council may restrain the said passage when they shall think best for the profit of the realm." (17 Ric. II. c. 7.) This act was confirmed in 1425 (4 Hen. VI. c. 5). Sufficient grain was raised in England to admit of exportation, but it was the policy of that age to endeavour to retain within the kingdom all those things which were indispensable to its wants, rather than by permitting freedom of export and import to trust to the operation of the commercial principle for an adequate supply.

In 1436 the exportation of wheat was allowed without the king's licence when the price per quarter at the place of shipment was 6*s.* 8*d.* or under. In the preamble of the statute (15 Hen. VI. c. 2) restrictions on exportation are loudly complained of: "for cause whereof, farmers and other men, which use manurement of their land, may not sell their corn but of a bare price, to the great damage of all the realm;" and the remedy provided is a freer permission to export the surplus—a regulation which is intended for the profit of the whole realm, but "especially for the counties adjoining to the sea." In 1441 this statute was continued (20 Hen. VI. c. 6), and in 1444-5 it was rendered perpetual (23 Hen. VI. c. 5).

Nearly thirty years after the statute of 1436 occurs the first law to prevent a supply of foreign grain. In the preamble of a statute (3 Edw. IV. c. 2), which was passed in 1463, it is remarked that, "Whereas the labourers and occupiers of husbandry within this realm be

daily grievously endamaged by bringing of corn out of other lands and parts into this realm when corn of the growing of this realm is at a low price;" in remedy of which it was enacted that wheat should not be imported unless the price at the place of import exceeded 6*s.* 8*d.* per quarter. By the act of 1463, so long as the price of wheat was below 6*s.* 8*d.* per quarter, exportation was permitted, and importation was prohibited. The price, therefore, was intended to be sustained at that height; and the benefit of the corn-grower was the sole object of the statute. But in 1474 (eleven years after the statute 3 Edw. IV. c. 2 was passed) we have the authority of the Paston Letters in proof of the suffering experienced from the want of a market for the superabundant supply of grain. Margaret Paston, writing to her son on the 29th of Jan. 1474, after quoting the very low price of corn and grain, says—"There is none outload (export) suffered to go out of this country as yet; the king hath commanded that there should none go out of this land. I fear me we shall have right a strange world: God amend it when his will is." In a letter written in the following year she makes the same complaints about low prices and the scarcity of money. ('Paston Letters,' ii. 91-93. Edit. by A. Ramsay.)

In 1533-4 an end was put to the system of exportation which had been established in 1463, and, with some occasional exceptions, had continued from that time; and thenceforth it was forbidden to export corn and provisions without the king's licence. The statute enacted for this purpose was intended to keep down prices, though the preamble sets out with the rational observation that, "forasmuch as dearth, scarcity, good cheap [good market], and plenty [of victual], happeneth, riseth, and chanceth, of so many and divers reasons that it is very hard and difficult to put any certain prices to any such things." It however ended by enacting that, on complaint being made of high prices, they shall be regulated by the lords of the council, and made known by proclamation; and that farmers and others shall sell their commodities at the prices thus fixed.

During the greater part of the sixteenth century a struggle was maintained by the makers of the laws against the rise of prices which characterised nearly the whole of that period. In September, 1549, a proclamation was issued, directed against dealers in the principal articles of food. According to it, no man was to buy and sell the self-same thing again, except brokers, and they were not to have more than ten quarters of grain in their possession at one time. This proclamation directed "that all justices should divide themselves into the hundreds, and look what superfluous corn was in every barn, and appoint it to be sold at a reasonable price; also, that one must be in every market-town to see the corn bought. Whoso brought no corn to market, as he was appointed, was to forfeit 10*l.*, unless the purveyors took it up, or it was sold to the neighbours." (Turner's *Hist. Eng.* i. 172.) Obedience to these regulations was not confined to the temporary provisions of a proclamation; but in 1551-2 they were, with some modifications, embodied in a statute (5 & 6 Edw. VI. c. 14). By this enactment, engrossers (persons buying corn to sell again) were subjected to heavy penalties. For the third offence they were to be set in the pillory, to forfeit their personal effects, and to be imprisoned during the king's pleasure. Farmers buying corn for seed were compelled to sell at the same time an equal quantity of their corn in store, under penalty of forfeiting double the value of what they had bought. Persons might engross corn, not forestalling it—that is, enhancing the price or preventing the supply—when wheat was under 6*s.* 8*d.* per quarter.

In 1562-3 a further attempt was made to restrict the operations of buying and selling in articles of food, as well as many other commodities. The 5 & 6 Edw. VI. c. 14, already quoted, contained a proviso that corn-badgers, allowed to that office by three justices of the peace of the county where the said badger dwelt, could buy provisions in open fair or market for towns and cities, and sell them, without being guilty of the offence of forestalling; but this relaxation was not permitted by a subsequent statute passed in 1562-3 (5 Eliz. c. 12), in the preamble of which the act 5 & 6 Edw. VI. is thus alluded

to:—"Since the making of which act such a great number of persons, seeking only to live easily and to leave their honest labour, have and do daily seek to be allowed to the said office, being most unfit and unmeet for those purposes, and also very hurtful to the commonwealth of this realm, as well by enhancing the price of corn and grain, as also by the diminishing of good and necessary husbandmen." Accordingly it was then enacted that the licences to corn-badgers should only be granted once a year by the justices at quarter-sessions, instead of at any period by three justices; and that none were to obtain a licence but resident householders of three years' standing, who are or have been married, and of the age of thirty, and are not servants or retainers to another person. Those who received a licence were to have it renewed at the end of every year. Licensed persons were also required to find security not to forestall or engross in their dealings, and not to buy out of open fair or market, except under express licence. The statute did not apply to the counties of Westmoreland, Cumberland, Lancaster, Chester, and York.

In 1554 a new act was passed (1 & 2 Phil. and Mary, c. 5) which allowed exportation so long as the price of wheat should not exceed 6*s.* 8*d.*, that of rye 4*s.*, and that of barley 3*s.* per quarter. The preamble complains that former acts against the exportation of grain and provisions had been evaded, by reason whereof they had grown unto a "wonderful dearth and extreme prices." Under the act of 1554, when prices exceeded 6*s.* 8*d.* per quarter for wheat exportation was to cease; and when it was under that price it could not be exported to any foreign country, or to Scotland, without a licence, under penalty of forfeiting double the value of the cargo as well as the vessel, besides imprisonment of the master and mariners of the vessel for one year. The penalty for exporting a greater quantity than was warranted by the licence was treble the value of the cargo, and imprisonment; and a cargo could be taken only to the port mentioned in the licence. The object was to prevent exportation when there was not a sufficient supply in the home market, and to permit it to be sent abroad when it was below a certain price at home.

In 1562, only eight years after the act 1 & 2 Phil. and Mary had been passed, the liberty of exportation was extended, and wheat might be carried out of the country when the average price was 10*s.* per quarter and under, that of rye, peas, and beans 8*s.*, and that of barley or malt 6*s.* 8*d.* per quarter (5 Eliz. c. 5); and to prevent evasion of the law, it was enacted that the corn and grain should only be exported from such ports as her Majesty might by proclamation appoint.

In 1571 a statute was passed (13 Eliz. c. 13) which contains provisions for settling once a-year the average prices by which exportation should be governed. The Lord President and Council in the North, also the Lord President and Council in Wales, and the Justices of Assize, within their respective jurisdictions, "yearly shall, upon conference had with the inhabitants of the country, of the cheapness and dearth of any kinds of grain," determine "whether it shall be meet at any time to permit any grain to be carried out of any port within the said several jurisdictions or limits; and so shall, in writing, under their hands and seal, cause and make a determination either for permission or prohibition, and the same cause to be, by the sheriff of the counties, published and affixed in as many accustomed market-towns and ports within the said shire as they shall think convenient." The averages, when once struck, were to continue in force until the same authorities ordered otherwise; and if their regulations should "be hurtful to the country by means of dearth, or be a great hinderance to tillage by means of too much cheapness," they could make the necessary alterations. All proceedings under this act were to be notified to the queen or privy council. The statute enacted that, "for the better increase of tillage, and for maintenance and increase of the navy and mariners of this realm," corn might be exported at all times to friendly countries when proclamation was not made to the contrary. A poundage or customs duty of 1*s.* per

quarter was charged on all wheat exported; but if exported under special licence, and not under the act, the duty was 2*s.* per quarter.

The law of 1463, which prohibited importation so long as the price of wheat was under 6*s.* 8*d.*, that of rye under 4*s.*, and that of barley under 3*s.* the quarter, appears not to have been repealed, but it must have remained inoperative, from the prices seldom or probably never descending below these rates. The importation of corn, therefore, we may reckon to have been practically free at this time.

In 1592-3 the price at which exportation was permitted was raised to 20*s.* per quarter, and the customs duty was fixed at 2*s.* (35 Eliz. c. 7). In 1603-4 the importation price was raised to 26*s.* 8*d.* per quarter (1 Jac. I. c. 25); and in 1623 to 32*s.* (21 Jac. I. c. 28). By the 21 Jac. I. c. 28, unless wheat was under 32*s.* per quarter, and other grain in proportion, buying corn and selling it again was not permitted. The king could restrain the liberty of exportation by proclamation. In 1627-8 another statute relative to the corn-trade was passed (3 Car. I. c. 5), which, however, made no alteration in the previous statute of James I. In 1660 a new scale of duties was introduced. When the price of wheat per quarter was under 44*s.* the import duty was 2*s.*; and when the price was above 44*s.*, the duty fell to 4*d.* Exportation was permitted at a duty of 1*s.* per quarter whenever the price of wheat did not exceed 40*s.* per quarter (12 Car. II. c. 4): the export duty was 1*s.* per quarter.

In 1663 the corn-trade again became the subject of legislation, and an act was passed (15 Car. II. c. 7). The preamble of this act commenced by asserting that "the surest and effectualest means of promoting and advancing any trade, occupation, or mystery, being by rendering it profitable to the users thereof," and that, large quantities of land being waste, which might be profitably cultivated if sufficient encouragement were given for the cost and labour on the same, it should be enacted, with a view of encouraging the application of capital and labour to waste lands, that, after September, 1663, when wheat did not exceed 48*s.* per quarter at the places and havens of shipment, the import duty should be 5*s.*, and when the price was above 48*s.* the duty was to be 4*d.* By the same act when wheat did not exceed 48*s.* per quarter, it might be exported, and when it was also at this price "then it shall be lawful for all and every person (not forestalling nor selling the same in the open market within three months after the buying thereof) to buy in open market, and to keep in his or their granaries or houses, and to sell again, such corn and grain," any statute to the contrary notwithstanding. This latter part of the statute abolished in effect the provisions of 5 & 6 Edward VI. c. 14, respecting the buying and selling of corn and grain.

In 1670, by another act (22 Car. II. c. 13), exportation was permitted, although the price of wheat should exceed the price fixed by the act of 1663 (48*s.*); but a customs' duty of 1*s.* per quarter was in this case to be charged. Wheat imported from foreign countries was at the same time loaded with duties so heavy as effectually to exclude it, the duty being 16*s.* when the price in this country was at or under 53*s.* 4*d.* per quarter, and 8*s.* when above that price and under 80*s.*, at which latter price importation became free. The object of this act was to relieve the agricultural interests from the depression under which they were labouring from the low prices of produce which had existed for twenty years, more particularly from 1646 to 1665. Between 1617 and 1621 wheat fell from 43*s.* 3*d.* the quarter to 27*s.*, in consequence of which farmers were unable to pay their rents. The low price was occasioned by abundant harvests; "for remedy whereof the Council have written letters into every shire, and some say to every market-town, to provide a granary or storehouse, with a stock to buy corn, and keep it for a dear year." (Contemporary writers quoted by Mr. Tooke in his 'Hist. of Prices.') The cheapness of wheat was attended with the good effect of raising the standard of diet amongst the poorer classes, who are described as "traversing the markets to

find out the finest wheats, for none else would now serve their use, though before they were glad of the coarser rye-bread." (Ibid.) The act of 1670 does not appear to have answered its object. Roger Coke, writing in 1671, says—"The ends designed by the acts against the importation of Irish cattle, of raising the rents of the lands of England, are so far from being attained, that the contrary hath ensued" (Ibid); and Coke speaks of a great diminution of cultivation.

The harvests of 1673-4-5 proved defective, and the same result occurred in 1677-8, so that the average price of the seven years ending 1672, during which wheat ranged at 36*s.* the quarter, was followed in the seven subsequent years, ending 1679, by an average of 46*s.*, being a rise of nearly 30 per cent. But these years of scarcity were followed by twelve abundant seasons in succession (with the exception of 1684, which was somewhat deficient), and the price of corn and grain again sunk very low. In the six years ending 1691 the average price of wheat was 29*s.* 5*d.* the quarter, and if the four years ending 1691 be taken, the average price was only 27*s.* 7*d.*, being lower than at any period during the whole of the century. There was no competition in the English market with the foreign grower during the above-mentioned years of low prices; and exportation was freely permitted on payment of a nominal duty. The means which the landed interest took to relieve themselves will be noticed in the next period.

The mode of taking the average prices of corn and grain established in 1570 (13 Eliz. c. 13) was acted upon till 1685, the necessary provisions for an alteration having been neglected in the Corn Act of 1670. These were made by a statute which enacted that justices of the peace, in counties wherein foreign corn might be imported, may, at quarter-sessions, by the oaths of two persons duly qualified—that is, possessed of freehold estates of the annual value of 20*l.*, or leasehold estates of 50*l.*, and not being corn-dealers, and by such other means as they shall see fit, determine the market price of middling English corn, which is to be certified on oath, hung up in some public place, and sent to the chief officer at the custom-house in each district.

II.—*From* 1689 *to* 1773.

The high prices of the seven years ending 1679 led to an extension of tillage, and this was followed by a succession of favourable seasons which occasioned low prices. Exportation of corn therefore was not only permitted as heretofore, but encouraged by bounties. The statute for granting bounties (1 Wm. and Mary, c. 12) is entitled 'An Act for Encouraging the Exportation of Corn.' The preamble states that it had been "found by experience that the exportation of corn and grain into foreign countries, when the price thereof is at a low rate in this kingdom, hath been a great advantage, not only to the owners of land, but to the traders of this kingdom in general;" and it was enacted that a bounty of 5*s.* the quarter should be granted on the exportation of wheat, so long as the home price did not exceed 48*s.*; with other bounties of smaller amount upon the exportation of barley, malt, and rye. The growers of corn were in possession of a market the sole supply of which was secured to them by the act of 1670 (22 Car. II. c. 13), and by the Bounty Act it was designed to prevent the overstocking of that market.

The seven years immediately succeeding 1693 were remarkable for a succession of unfavourable seasons. In the four years ending 1691 the price of wheat averaged 27*s.* 7*d.* the quarter, but in the four years preceding and including 1699 it reached 56*s.* 6*d.* The bounty was inoperative during this period, and was suspended by statute (12 Wm. III. c. 1), from the 9th of February, 1699, to the 29th of September, 1700. The preamble of the act contained an acknowledgment that the statute granting the bounty "was grounded upon the highest wisdom and prudence, and has succeeded, to the greatest benefit and advantage to the nation by the greatest encouragement of tillage." Before this temporary act had expired, another act was passed in 1700 (11 & 12 Wm. III. c. 20), which abolished the export duties of 1*s.* per quarter for wheat, and a less sum on other corn. "From 1697

to 1773 the total excess of exports over imports was 30,968,366 quarters, upon which export bounties, amounting to 6,237,176*l.* were paid out of the public revenue." (Commons' Report on Agric. Distress, 1821.) In 1750 the sum of 324,176*l.* was paid in bounties on corn. The exports of 1748-49-50 (during which, moreover, the price of wheat fell from 32*s.* 10½*d.* to 28*s.* 10¾*d.* the quarter) amounted to 2,120,000 quarters of wheat, and of all kinds of corn and grain to 3,825,000 quarters. This was the result of a cycle of abundant years and of extended cultivation caused by the bounty. In the twenty-three years from 1692 to 1715, says Mr. Tooke, in his elaborate 'History of Prices,' there were eleven bad seasons, during which the average price of wheat was 45*s.* 8*d.* the quarter; in the fifty years ending 1765 there were only five deficient harvests, and the average price for the whole half-century ranged at 34*s.* 11*d.*; and, taking the ten years ending 1751, during which the crops were constantly above an average, the price of wheat was only 29*s.* 2½*d.* the quarter.

Adam Smith refers to "the peculiarly happy circumstances" of the country during these times of plenty; and Mr. Hallam describes the reign of George II. as "the most prosperous period that England had ever experienced." "Bread made of wheat is become more generally the food of the labouring people," observes the author of the 'Corn Tracts,' writing in 1765. Referring to the same period, Mr. Malthus remarks:—"It is well known that during this period the price of corn fell considerably, while the wages of labour are stated to have risen." Trade was flourishing, and the exports and imports progressively increasing during this period of abundance.

In twenty-six years, from 1730 to 1755, there had been only one unfavourable season, but from 1765 to 1775 there was a very frequent recurrence of unfavourable years, and the last five years of this period were all of this character. In 1766 the quartern loaf was selling in London at 1*s.* 6*d.*; addresses were sent up from various parts of the country complaining of general distress; and a proclamation was issued suspending exportation, and for enforcing the laws against forestallers and regraters. Exportation was suspended also in the following year, and also in 1770 and 1771. In 1772 importation was allowed duty-free to the 1st of May, 1773; and in this latter year the city of London offered a bounty of 4*s.* per quarter for 20,000 quarters of wheat, to be imported between March and June. The average prices of wheat had risen from 29*s.* 2½*d.* in the ten years ending 1751, to 51*s.* for the ten years ending 1774, being an advance of 75 per cent. The excess of exports over imports from 1742 to 1751 had been 4,700,509 quarters of wheat, and, including all kinds of grain, 8,869,190 quarters, but from 1766 to 1775 there was an excess of imports to the extent of 1,363,149 quarters of wheat and 3,782,734 of corn and grain of all kinds. The old corn-law of 1689, under which a bounty on exportation had been granted, was now become a dead letter in consequence of the high range of prices in the home market.

After the peace of 1763 population rapidly advanced with the growth of trade and manufactures. In the reign of George I. there had only been sixteen enclosure acts passed; in the succeeding reign there were 226; but the number of such acts from 1760 to 1772 inclusive amounted to 585.

Several acts were passed in the period between 1689 and 1773 relating to the mode of ascertaining the average prices of corn and grain. In one of them, passed in 1729, the preamble states that the justices of the peace had "neglected to settle the price of corn at their quarter-sessions after Michaelmas last, and to return certificates thereof to the chief officer and collector of the customs residing in the respective ports where the said corn or grain has been or may be imported; by means whereof the said officers were at a loss how to charge the customs and duty due for such corn; which has been, and may be, a great loss to the revenue, and a detriment to the farmers and fair traders." To remedy the negligence of the gentry, the collectors of customs were empowered to settle the averages.

In 1732 another act was passed "for the

better ascertaining the common prices of middling English corn and grain, and for preventing the fraudulent importation of corn and grain." After 1st June, 1732, the justices of the peace, in counties which contained ports of importation, were to charge the grand jury at quarter-sessions to make inquiry and presentment upon oath of the common market-prices, which were to be certified to the officers at the ports specified. The averages were, however, only to be taken four times a year.

In 1766 the authorities of the city of London were empowered to settle the price of middling English corn and grain in January and July, in addition to the former periods of April and October.

It was not until 1770 that returns of prices were directed to be made weekly. In that year an act was passed, on the ground that a "register of the prices at which corn is sold in the several counties of Great Britain will be of public and general advantage." The justices of the peace were to order returns to be made weekly of the prices of British corn and grain from such towns in each county as they thought proper; the number of towns selected in each county not being more than six nor less than two. The Treasury was to appoint a receiver of corn returns, who was to publish an abstract of the weekly returns in the 'London Gazette,' and four times a year certify to the clerks of the peace the prices which were respectively prevalent in each county.

In 1772 an act was passed (12 Geo. III. c. 71) which removed several restrictions in old statutes on the ground that, "by preventing a free trade in the said commodities [corn, flour, cattle, &c.], they have a tendency to discourage the growth and enhance the price of the same, which statutes, put into execution, would bring great distress on the inhabitants of many parts of the kingdom."

III.—*From* 1773 *to* 1791.

In the preamble of the Corn Act of 1773 (13 Geo. III. c. 43) it is acknowledged that previous laws had greatly tended to the advancement of tillage and navigation, but that, on account of the small supplies on hand and scanty crops, it had been frequently necessary to suspend the operation of the laws; and that a permanent law on the corn-trade "would afford encouragement to the farmer, be the means of increasing the growth of that necessary commodity, and of affording a cheaper and more constant supply to the poor." And the act then fixes the following scale of duties, to come into operation on the 1st of January, 1774:—Whenever the price of middling British wheat, at ports of importation, was at or above 48*s.* per quarter, a duty of only 6*d.* per quarter was to be taken on all foreign wheat imported during the continuance of that price. When the price was at or above 44*s.*, exportation and the bounty together were to cease; and the carrying of British grain coastwise ceased also. Under this act, corn and grain might be shipped to Ireland when exportation was prohibited from that country. Foreign corn warehoused under bond in twenty-five ports of Great Britain mentioned in the act might be re-exported duty free.

The home market was now opened to foreign supplies of corn under much more advantageous terms than before. Importation was constant and considerable, and prices were steadier on the whole, during the eighteen years from 1775 to 1792—notwithstanding the occurrence of five seasons in which the harvests were deficient—than they had been in the ten years preceding 1773. In the ten years ending 1769 the excess of exports amounted to 1,384,561 quarters; but in the next ten years, ending 1779, the excess was on the side of the imports to the extent of 431,566 quarters; and in the similar ten years ending 1789 there was also an excess amounting to 233,502 quarters. From 1760 to 1780 the number of acres enclosed under local acts was 1,912,350; in the ten years ending 1789 the number of acres enclosed had fallen to 450,180. The average price of wheat was 45*s.* the quarter in the ten years ending 1779, and 45*s.* 9*d.* in the ten years ending 1789. The extension of cultivation in the twenty years from 1760 to 1780, together with the improvement of agriculture, sufficed

for the increased demands of the country, without breaking up much fresh land.

It was alleged, however, that the act of 1773 had rendered England dependent upon other countries for the supply of corn. The bounty by which the corn-growers had formerly profited, and which they were led to anticipate would still be secured to them, had never been obtained under this act.

At the commencement of the present period the average prices of corn were struck four times a-year, at the quarter-sessions, and they could not be altered between the interval of one quarter-session and another. In 1774, however, an act was passed (14 Geo. III. c. 64) by which exportation was regulated by the price on the market-day preceding the shipment; thus adopting the real average price at the time, instead of the average which existed three months before.

Six years afterwards, in 1780-1, it was enacted (21 Geo. III. c. 50) that the prices of English corn for the port of London and the ports of Kent and Essex should be determined by the averages taken at the London Corn Exchange. The weekly average was to regulate the exportation; but the importation of foreign corn and grain was regulated by averages struck only once a quarter.

In the session of 1788-9 new regulations were framed (29 Geo. III. c. 58), applying to all parts of the kingdom, which was divided into twelve districts, and in each a number of the principal market-towns was selected, in which, and at the sea-ports, the price of corn was to be ascertained for each district. Weekly returns were to be made to the receiver in London, who, on the 1st of February, May, August, and November, was to compute from the returns of the six preceding weeks the average price of each description of British corn and grain (with the exception of oats, the averages of which were to be computed on the returns of the twelve preceding weeks). The aggregate average price of the six weeks (and for oats of the twelve weeks) was to be transmitted to the principal officer of the customs in each district, and to regulate the importation at each port of the said district. The export-trade was still regulated by the weekly averages. Under this act each of the twelve maritime districts was treated as distinct in itself, and counties on one side of the kingdom might be exporting their surplus produce to a foreign market, while those on the other side might be importing.

IV.—*From* 1791 *to* 1804.

In the new corn-law of 1791 it was enacted that the bounty of 5*s.* per quarter should be paid when wheat was under 44*s.*, and that, when wheat was at or above 46*s.*, exportation was to cease. The new scale of import duties was as follows:—For wheat under 50*s.* per quarter, the "high duty" of 24*s.* 3*d.* was payable; at 50*s.*. but under 54*s.*, the "first low duty" of 2*s.* 6*d.*; at or above 54*s.*, the "second low duty" of 6*d.* was payable. The duty of 24*s.* 3*d.*, so long as the price of wheat was under 50*s.* the quarter, was equivalent to a prohibition.

The thirteen years from 1791 to 1804 form a very eventful period in the history of the Corn Laws. Under the comparatively free system established by the Corn Act of 1773, the excess of imports had been comparatively trifling; but under an act constructed rather to prevent importation, the excess of imports in the thirteen years from 1791 to 1803 amounted to 6,458,901 quarters of wheat and wheat-flour, and enormous sacrifices were made to obtain this quantity.

The harvest of 1793 was below an average, and those of the two following years were still more deficient. The average price of wheat rose from 55*s.* 7*d.*, in January, 1795, to 108*s.* 4*d.* in August. Parliament met in October, when the King's speech alluded to the "very high price of grain" as a subject of "the greatest anxiety." An act was passed, granting a bounty of from 16*s.* to 20*s.* the quarter, according to the quality, on wheat from the south of Europe, till the quantity should amount to 400,000 quarters; and from America till it should amount to 500,000 quarters; and 12*s.* to 15*s.* from any other part of Europe till it should amount to the same quantity; the bounty to be 8*s.* and 10*s.* after that quantity was exceeded. Neutral vessels laden

with grain were forcibly seized on the high seas, and the masters compelled to sell their cargoes to the government agents. The members of both houses of parliament bound themselves by a written pledge to observe the utmost frugality in the use of bread in their respective households; and engaged to reduce the consumption of wheat by at least one-third of the usual quantity consumed in ordinary times, unless the average price of wheat should be reduced to 8*s.* the bushel. The hair-powder tax was imposed at this period, as one means of diminishing the consumption of wheat.

For two or three years after 1795 the harvests were more favourable, until the disastrous season of 1799. The average price of wheat at the commencement of 1799 was 49*s.* 6*d.* the quarter, but in December it had risen to 94*s.* 2*d.*; and soon after the commencement of the following year the prospects of scarcity had alarmingly increased. Recourse was again had to a bounty; and an act was passed, offering to the importer the difference between the average price of English wheat in the second week after importation and 90*s.* on wheat from the south of Europe, Africa, and America; 85*s.* from the Baltic and Germany; and 90*s.* from Archangel, if imported before the 1st of October, 1800. Lord Hawkesbury also brought in a bill, which was passed through its various stages on the following day, prohibiting the sale of bread until twenty-four hours after it had been baked. Prices, however, continued to advance, and in June, 1800, wheat was 134*s.* 5*d.* the quarter. Considerable importations brought down the price to 96*s.* 2*d.* in August; but in December it had again advanced to 133*s.*, in consequence of the deficiency of the harvest of 1800. Parliament in consequence met in November, 1800, earlier than had been intended. The speech from the throne alluded to the supposition of combination and fraudulent practices for the purpose of raising the price of grain, but this a committee of the House of Lords denied. A select committee of the Commons was again appointed to take into consideration the existing high prices, and by the end of December this committee had presented six reports to the house, in the first of which the deficiency of the crops was stated to be one-fourth, and that the old supplies were exhausted before harvest. The committee suggested a variety of remedies to meet the emergency. Among other things they recommended the encouragement of the fisheries, the stoppage of the distilleries, a bounty on importation; also a recommendation from persons in authority, pointing out the necessity of the general practice of economy and frugality in all articles of food; and it was proposed to call upon the other house of parliament to join in an address to the throne, requesting his Majesty to issue a proclamation in favour of this suggestion. A royal proclamation was issued accordingly, and was widely circulated by the clergy and magistrates throughout the kingdom. An act was also passed, guaranteeing the difference between the average price of foreign wheat in the third week after importation and 100*s.* to the importer of *all* wheat weighing 53 lbs. per bushel, if imported within the time limited by the act. The advance of prices continued unchecked in spite of these various plans; and in March, 1801, wheat averaged 156*s.* 2*d.* the quarter, or, taking the imperial measure now in use, 20*s.* the bushel; barley averaged 90*s.* 7*d.* the quarter, and oats 47*s.* 2*d.* The importations of the year were, wheat, 1,424,766 quarters; barley, 113,966; oats, 583,043. For four weeks the quartern loaf in London was as high as 1*s.* 10½*d.* The agricultural districts were again disturbed by riots. The money wages of the agricultural labourer, in order to have been equal to those which he received in the reign of George II., should have risen to about 30*s.* per week. An advance of wages to a trifling extent was obtained in some trades. The salaries of persons holding official situations under the government were also increased. The misery of the bulk of the people during the years of scarcity is shown by the diminished number of marriages, which, from 79,477 in 1798, were reduced to 67,288 in 1801. The fallacy that wages advance with the price of food was never more glaringly displayed than at this period. This me-

morable dearth was a season of prosperity, as Mr. Tooke states, "to the landlords, who were raising, or had the prospect of soon raising, their rents; and to the farmers, who were realizing enormous gains pending the currency of their leases."

Comparative abundance was restored by a tolerably good harvest in 1801. In the two following years the harvests, though not very abundant, were favourable, and a further depression of prices took place. At the close of 1802 the average price of wheat was 57*s.* 1*d.* the quarter; early in 1803, 52*s.* 3*d.*; and at a corresponding period in 1804 the average price was as low as 49*s.* 6*d.* Meetings were now held by the agriculturists for the purpose of petitioning parliament for additional protection to agriculture, the act of 1790-1, which had raised the free import price (there was merely a nominal duty of 6*d.*) from 48*s.* to 54*s.*, not having satisfied them. This brings us to the termination of the fourth period.

The Corn Act of 1790-1 consolidated, amended, and repealed a number of old statutes relating to the corn-trade; amongst the latter, the 15 Charles II. c. 7, which prohibited buying corn to sell again and laying up corn in warehouses. It also permitted foreign corn and grain to be bonded in the king's warehouses, the duty to be payable only when taken out for home consumption. The object of this beneficial clause is stated as follows:—"To promote and extend the commerce of the merchants of this kingdom in foreign corn, and to provide stores which may always be ready for the relief of his Majesty's subjects in times of dearth." Many of the provisions of the act, however, interfered with trade to a vexatious and injurious extent. When foreign exportation was not allowed at any particular port, not even home produce could be carried thence coastwise, even to a port at which exportation was at the time taking place. Foreign vessels might, however, change their destination to any port where importation was permitted, if, on their arrival at that for which their cargo had been shipped, importation had ceased to be allowed. The country was still divided into so many independent sections, and this regulation was introduced into Scotland, which was divided into four districts. For the purposes of exportation, the weekly averages of each district were cited, and, for importation, the average of the six weeks preceding the 15th of February, May, August, and November. Thus the one varied from week to week, and the latter could only be changed four times a-year.

V.—*From* 1804 *to* 1815.

On the 13th of April, 1804, the Chancellor of the Exchequer moved for the appointment of a select committee to inquire into the principle and operation of the Corn Regulation Act of 1791, and to determine whether the scale which it fixed for the regulation of imports and exports was now applicable. On the 14th of May the committee reported that the act alluded to required "very material alteration." On the 14th of June they stated in a second report "that the price of corn from 1791 to the harvest of 1803 has been very irregular; but, upon an average, increased in a great degree by the years of scarcity, has in general yielded a fair profit to the grower. The casual high prices, however, have had the effect of stimulating industry, and bringing into culture large tracts of waste land, which, combined with the two last productive seasons, has occasioned such a depression in the value of grain as it is feared will greatly tend to the discouragement of agriculture, unless maintained by the support of parliament."

A new Corn Act was therefore passed which established the following scale for the admission of foreign corn:—Wheat under 63*s.* per quarter, the "high duty" of 24*s.* 3*d.* payable; at 63*s.* and under 66*s.*, the "first low duty;" and at or above 66*s.*, the "second low duty," which amounted only to 6*d.* The free import or nominal duty price was thus raised from 54*s.*, at which it stood in the act of 1790-1, to 66*s.*—an increase of 12*s.* The bounty of 5*s.* on exportation was to be paid when the average price of wheat was at or under 48*s.*; and when the average rose to 54*s.* exportation was to be prohibited: these two provisions of the act proved inoperative.

Immediately after the passing of this act prices rose between March and December from 49*s.* 6*d.* the quarter to 86*s.* 2*d.* The crop of 1804 proved deficient; in the three following seasons the harvests were not abundant; and in the five years from 1808 to 1812 they were very deficient. In August, 1812, the average prices were —for wheat 155*s.*, barley 79*s.* 10*d.*, and oats 56*s.* 2*d.*; and Mr. Tooke says (Hist. of Prices, i. 323) that in Mark-lane the finest Dantzic wheat fetched 180*s.*, and oats in one or two instances were sold at the enormous price of 84*s.* the quarter.

The war in which we were engaged during the above-mentioned years when the harvests were deficient, added to the expense and difficulty of procuring supplies of grain from abroad; but notwithstanding the anti-commercial spirit which the war had assumed, the French government granted licences under which about 400,000 quarters of wheat, besides other grain, were imported to supply the deficiency of the harvest of 1809. In 1810 we imported 1,500,000 quarters of wheat and flour, and 600,000 quarters of other grain and meal. The expenses of freight, insurance, and licenses amounted to from 30*s.* to 50*s.* per quarter on wheat. The enormous charges on importation were added to the natural price of British corn; and this was one of the causes of what were called the "war prices" of this memorable period, and of the extraordinary profits of farmers and landowners

The high prices stimulated cultivation, and from 1804 to 1814 inclusively the number of inclosure bills which received the royal assent was 1084, being considerably more than for any other corresponding period. The state of the agricultural interest at this time has been impartially described by Mr. Tooke:—A great amount of gain had been distributed among the agricultural classes; and as the range of high prices (with an interval of depression between the harvests of 1810 and 1811, so short as not to have been felt at all by the landlord, and very little by the farmer) had been of an unusually long continuance, it was concluded that the causes of that high range were permanent. From 1809 to 1813 was accordingly the period in which rents experienced their greatest rise,—that is, upon the expiration of leases, they were advanced in full proportion to the high range of the prices of produce; and in several instances they were raised threefold or upwards of what they had been in 1792. (Hist. of Prices, i. 323-6.)

A year or two of low prices of agricultural produce again brought to a close another period in the history of the Corn Laws. Wheat, which had been sold as high as 180*s.* the quarter (for select parcels) in 1812, fell to 73*s.* 6*d.* after the abundant harvest of 1813; and after that of 1814, which was rather favourable than otherwise, the average price was reduced to 53*s.* 7*d.* the quarter. This fall in prices and the cessation of hostilities led to the reconsideration of the whole question of the Corn Law.

During the present period an important change was made in the mode of striking the average prices of corn and grain. The twelve maritime districts of England, and the four similar districts of Scotland, ceased to be regarded as sixteen separate sections, each of which was regulated by the prices prevalent within its separate limits; but for England, the averages, taken as before, were computed for the whole of the twelve districts at once, and the average price obtained from the computation regulated importation and exportation at sea-ports situate in any part of the country; and for Scotland the same plan was pursued. The six weeks' averages, struck quarterly, regulated the import-duty, and the weekly average the exports.

In 1806 was passed 'An Act to permit the free Interchange of every Species of Grain between Great Britain and Ireland' (46 Geo. III. c. 97). Ireland had been previously treated as a colony, but this act placed her on an equality with other parts of the kingdom.

VI.—*From* 1815 *to* 1822.

The real object of the Corn Act of 1815 was to perpetuate high prices and high rents by artificial scarcity. In June, 1814, a committee of the House of Lords on the corn trade was appointed, and in their second report the committee recommended that so long as the average price

of wheat was under 80*s.* the ports should be completely closed against supplies from other countries. The prohibitive price suggested by the agricultural witnesses examined by the committee varied from 72*s.* to 96*s.* Out of sixteen witnesses belonging to this class, only four were in favour of the free importation price being below 80*s.* per quarter. This second report was presented on the 25th of July; but a bill which had been brought in, founded on its recommendations, was strongly opposed, and eventually abandoned. An act was however passed, which repealed the bounty on exportation (54 Geo. III. c. 69). From 1792, the high prices which prevailed in the home market rendered the bounty inoperative. By the new act exportation might take place at any time without reference to prevailing prices.

The average price of wheat for the year 1814 was about 34*s.* per quarter lower than the average of the preceding year, though the harvest had not been an abundant one. In the month of February, 1815, the average price was under 60*s.*, and before harvest it might rise to 66*s.*, when under the act of 1804 the ports would be open and prices again be depressed, and it was thought to a very low point, in consequence of the obstacles to free intercourse with the continent being removed. Early in the session of 1815, therefore, a bill was brought in, giving effect to the recommendation of the committee of the previous year, and fixing 80*s.* as the lowest point at which importation should take place. The measure produced great excitement throughout the country, particularly in the manufacturing districts and in all the large towns. In the House of Commons, at an early period, a division took place in favour of 72*s.* being substituted for 80*s.*, with the following result:—For the motion, 35; against it, 154; majority, 119. On the 3rd of March an attempt was made to throw out the bill:—For the motion, 56; against it, 218; majority, 162. On the 6th of March the vicinity of the House of Commons was thronged by an excited multitude, and several members were stopped, some of them roughly handled, and they were questioned by the mob as to the vote which they intended to give. Ultimately the military were called out, and, with the civil force, kept the streets clear. This evening the gallery of the House of Commons was closed. An attempt was made to render the bill more favourable by substituting 74*s.* instead of 80*s.* as the pivot price; and the motion was supported by 77 against 208, being a majority of 131. On the 8th of May, on bringing up the report, an amendment was moved, that the bill be read that day six months, when there voted 50 in its favour, and 168 against it; majority, 118. A final attempt was made to substitute a lower rate than 80*s.*, leaving it to the House to determine the exact price at which prohibition ceased; but only 78 voted for the motion, and 184 in favour of the measure as originally proposed. On the 10th of March, on the third reading, an amendment was moved, that the bill be thrown out, but it was only supported by 77 against 245; majority 168. On the 20th of March the bill passed the Lords by a majority of 107:—128 contents, and 21 non-contents. The measure was opposed with great force and acuteness by several of the most eminent statesmen of the day; and Lord Grenville drew up an excellent protest embodying the views of the minority.

The 23rd of March, 1815, the bill received the Royal assent.

Until the average price of wheat rose to 80*s.* the ports were now to be effectually closed. Colonial wheat was admitted when the average prices reached 67*s.* per quarter. Such was the leading feature of the new act (55 Geo. III. c. 26). But the mode in which the average prices were determined greatly increased in stringency. A new average was to be struck quarterly, on the 15th of February, May, August, and November, from the aggregate prices of the six preceding weeks; but it was provided that, if during the six weeks subsequent to any of these dates the average prices, which might be at 80*s.*, fell below that price, no supplies should be admitted for home consumption from any ports between the rivers Eyder and the Bidassoa,—that is, from Denmark to Spain.

It was the general expectation of the

farmers that the act of 1815 would maintain the prices of their produce at a rate somewhat under that of the scale which the legislature had adopted; and which, for wheat, was 80*s.*; barley 40*s.*; oats 27*s.*; and rye, beans and peas, 53*s.* They entered into contracts with their landlords and others with this conviction. But, as in every measure passed since 1773 prices had risen above the scale which had been fixed as the prohibitive rate, it happened that they now sunk below it. In 1816, 1817, and 1818, three deficient harvests occurred, that of the former year being below an average crop to a greater extent than in any year since the periods of scarcity at the close of the last century. Prices rose above the rate at which foreign supplies were admitted, and in 1817 and 1818 above 2,600,000 quarters of wheat were imported. In 1821 and 1822 the agriculturists endured the severest distress, and the engagements which they had been induced to make under the fallacious hopes excited by the last Corn Act and the range of high prices during the war occasioned them to be swept from the land by thousands. In the week ending December 21st, 1822, the average prices of corn and grain were as follow:—

	Wheat.		Barley.		Oats.		Rye.		Beans.		Peas.	
	s.	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*	*s.*	*d.*
	38	8	29	4	18	9	23	6	28	10	29	4
Being	41	4	10	8	8	3	29	6	24	2	23	8

lower than the scale which was framed for the farmer's protection. The harvest of 1820 was estimated as one-fourth above an average crop, and by some, who included the extended breadth of wheat under cultivation in consequence of the high prices of 1816-17-18, the surplus was computed at about one-third above the average,—that is, there was a surplus of between 3 and 4 million quarters of wheat, for which there was no demand. The crop of 1821 was large, but of inferior quality; that of 1822 was above an average, and the harvest was unusually early. The cause of the great fall of prices and of its distressing effects on the farmers was sufficiently obvious. They were under leases and rents founded upon an extraordinary conjuncture of bad seasons with a state of war, and upon an act which promised to keep up high prices by excluding supplies of foreign grain.

The fluctuations in price under the corn-law of 1815 were as extraordinary as they were unexpected, and amounted to 199½ per cent.

The cry of agricultural distress never ceased to ring in the ears of the legislature during the years 1820-1-2. Committees of the House of Commons were appointed to inquire into the condition of agriculture. In Parliament Sir Thomas Lethbridge proposed a permanent duty on foreign wheat of 40*s.* per quarter. Mr. Benett's plan was a permanent duty of 24*s.* per quarter after the averages had again reached 80*s.*, and a drawback of 18*s.* per quarter to be allowed on the exportation of wheat of marketable quality. Mr. Curwen suggested that when the average price of wheat reached 80*s.* the ports should be opened for the admission of 400,000 quarters of foreign wheat, at a duty of 10*s.*; and if, six weeks after this quantity had been admitted, the average price should still continue above 80*s.*, then to allow of the importation of an additional 400,000 quarters, at a duty of 5*s.* The late Mr. Ricardo moved resolutions to the effect that when the averages rose to 65*s.* per quarter all the foreign wheat then in bond should be liberated at a duty of 15*s.*; and that afterwards, whenever the averages exceeded 70*s.* the trade in wheat should be free, at a permanent duty of 20*s.*: one year from that time the duty to be reduced to 19*s.*, and a similar reduction to be made each year until the duty was 10*s.*, at which it should be permanently fixed; at the same time allowing a drawback or bounty on exportation of 7*s.* per quarter. On the 29th of April, during the agricultural panic of 1822, Mr. Huskisson moved a series of resolutions, the first and second of which affirmed that prices had fallen, although the quantity of corn imported was trifling, and the third resolution showed—"That the excess of the supply above the demand must have arisen either from an extent of corn-tillage more than commensurate to the average consumption of the country, or from a succession of abundant harvests upon the same extent of tillage, or from

the coincident effect of both these causes." To prevent the alternate evils of scarcity and redundance, Mr. Huskisson proposed that the trade should be permanently free at a duty of 15*s.* per quarter, when the averages were under 80*s.*; and when above 80*s.* the duty to be 5*s.*; and above 85*s.* a nominal duty of 1*s.* only to be imposed.

The Select Committee of the House of Commons had a still greater variety of projects offered for its consideration. One plan proposed to the Committee of 1821 was to withdraw the permission to warehouse foreign wheat or any other foreign grain in England. The Committee of 1822 had under its serious consideration two plans for the alleviation of agricultural distress:—1. The application of 1,000,000*l.* in Exchequer bills, to be employed through the agency of government in buying up a certain quantity of British wheat to be placed in store. 2. Advances to be made to individuals on produce deposited in warehouses, to prevent them coming into the market simultaneously. The first plan was rejected by the Committee, but they considered the second was feasible, and were of opinion that "The sum of 1,000,000*l.* so employed (in loans on stock) would probably be fully adequate to give a temporary check to the excess which is continually poured into the overstocked market." In the House of Lords, the Marquis of Londonderry, on the 29th of April, moved that 1,000,000*l.* be advanced in Exchequer bills, when the average price of wheat was under 60*s.*

The fall of prices in 1820-1-2 had fully demonstrated the futility of the corn-law of 1815, and it was therefore proposed to modify it.

VII.—*From* 1822 *to* 1828.

The corn-law of 1815 was suspended by a new act passed in July, 1822, which enacted that, "as soon as foreign wheat shall have been admitted for home consumption under the provisions of the Act of 55 Geo. III. c. 26 [the corn-law of 1815], the scale of prices at which the home consumption of foreign corn, meal, or flour is permitted by the said Act shall cease and determine." The new scale was as follows:—Wheat at or above 70*s.*, duty 12*s.*; and for the first three months of the ports being open an additional duty of 5*s.* per quarter, being a duty of 17*s.* Above 70*s.*, and under 80*s.*, the "first low duty" of 5*s.*, with the addition of 5*s.* for the first three months; above 80*s.* and under 85*s.*, the "second low duty" of 1*s.* was alone to be charged. This act never came into operation. It is justly described as being merely a pretended relaxation of the act of 1815; for, though the limit of total prohibition was lowered from 80*s.* to 70*s.*, yet the duty would have rendered it more severe than the measure for which it was substituted as an improvement. In 1826, in consequence of the unfavourable harvest, a temporary act was passed, under which a quantity of foreign grain was admitted for home consumption. In 1827 the Government was driven to a still more decisive step. In the spring of the year ministers had stated that it was not their intention to liberate the corn then in bond, upon which prices immediately rose. This was followed by some disturbances in the manufacturing districts, to allay which the Government, on the 1st of May, proposed to Parliament to release the bonded corn, and, as a measure of precaution, required to be invested with powers to admit during the recess of Parliament an additional quantity, not exceeding 500,000 quarters, in case the harvest proved deficient. These powers were acted upon, and on September 1 an Order in Council was issued, admitting certain descriptions of grain for home consumption, until forty days after the next meeting of Parliament, at an almost nominal rate of duty, on the ground that, "if the importation for home consumption of oats and oatmeal, and of rye, peas, and beans, be not immediately permitted, there is great cause to fear that much distress may ensue to all classes of his Majesty's subjects." In the ensuing session of Parliament ministers obtained an act of indemnity for this order.

In 1827 it had become sufficiently evident that some other system must be devised, and Mr. Canning introduced certain resolutions in the House of Commons,

the leading principle of which was to permit importation at all times by substituting a graduated scale of duties. A bill was brought in, founded on these resolutions, fixing a duty of 1*s.* on foreign wheat when the average price was 70*s.* per quarter. In respect to colonial wheat, the duty was fixed at 6*d.* when the averages were 65*s.* per quarter, and when under that sum at 5*s.* per quarter. The bill was not carried, as the Duke of Wellington moved and carried a clause the effect of which would have been to keep the ports entirely shut so long as the price of wheat was under 66*s.* the quarter. An act was, however, passed during this session to permit corn, meal, &c., warehoused on the 1st of July, 1827, to be entered for home consumption upon payment of duties according to a fluctuating scale. About 572,000 quarters of wheat and flour were entered for consumption under this act, at a duty averaging above 20*s.* per quarter. The harvest had not been defective, and this was the very reason why the corn in bond was released notwithstanding the high duty, as there was no prospect of prices advancing.

In 1821 a new act was passed relative to the averages. Instead of "the maritime districts," 148 towns were named, for which the magistrates were to appoint inspectors to make a return of the weekly purchases.

The six weeks' averages still regulated the amount of duty on importation, but they were greatly improved by being every week subject to an alteration. Each week the receiver of corn returns struck out one week's averages, admitting those last received, and thereby affecting the aggregate average, as prices rose or fell from week to week. The introduction of a fluctuating scale of duty was an important step, and its effect will be considered in the next period.

It was impossible to continue any longer a system which, for three successive years, 1825-6-7, had been compelled to bend to the force of temporary circumstances; and like previous measures it was abandoned by its supporters either as inefficient or injurious. Such a state of things brings us to another period in the history of corn-law legislation.

VIII.—*From July* 1828 *to April* 29, 1842.

In 1828 Mr. Charles Grant (afterwards Lord Glenelg) introduced a series of resolutions slightly differing from those which had been moved by Mr. Canning, and they were eventually embodied in a bill which was carried through both Houses, and received the Royal assent on the 15th of July. The act was entitled, 'An Act to amend the Laws relating to the Importation of Corn,' and it repealed 55 Geo. III. c. 26 (1815); 3 Geo. IV. c. 60 (1822); and 7 and 8 Geo. IV. c. 58 (1827).

The provisions for settling the averages under this act were as follow:—In one hundred and fifty towns in England and Wales, mentioned in the act, corn-dealers were required to make a declaration, that they would return an accurate account of their purchases. [In London, the sellers made the return.] Inspectors were appointed in each of these one hundred and fifty towns, who transmitted returns to the Receiver in the Corn Department of the Board of Trade, whose duty it was to compute the average weekly price of each description of grain, and the aggregate average price for the previous six weeks, and to transmit a certified copy to the collectors of customs at the different outports. The return on which the average prices were based was published every Friday in 'The London Gazette.' The aggregate average for six weeks regulated the duty on importation.

Wheat at 50*s.* paid a duty of 36*s.* 8*d.*; barley at 32*s.* a duty of 13*s.* 10*d.*; oats at 24*s.* a duty of 10*s.* 9*d.*; rye, peas, and beans, at 35*s.*, a duty of 16*s.* 9*d.* Colonial wheat was admitted at a duty of 6*d.* when the average of the six weeks was at or above 67*s.*; and when below 67*s.* the duty was 5*s.* the quarter, and for other grain in proportion. Importation was free on payment of 1*s.* on the quarter when wheat in the home market was 73*s.*; barley 41*s.*; oats 31*s.*; and rye, peas, and beans 46*s.* the quarter.

In the following Table the scale of duties proposed by Mr. Canning, and that adopted by the legislature in 1828, are placed in juxtaposition:—

Average Prices of Wheat.	Duty according to Mr. Canning's Bill.	Duty fixed by Lord Glenelg's Act.	
s.	s.	s.	d.
73	1	1	0
72	1	2	8
71	1	6	8
70	1	10	8
69	2	13	8
68	4	16	8
67	6	18	8
66	8	20	8
65	10	21	8
64	12	22	8
63	14	23	8
62	16	24	8
61	18	25	8
60	20	26	8
59	22	27	8
58	24	28	8
57	26	29	8
56	28	30	8
55	30	31	8
54	32	32	8
53	34	33	8

After the experience of a few seasons the corn-law of 1828 gave no more satistion than those which had preceded it. In December, 1835, the average price of wheat was down to 35*s.* 4*d.* per quarter, and in January, 1839, it was as high as 81*s.*, being a difference of 129 per cent. In 1833 and 1836 the distressed condition of the agricultural interest was noticed in the speech from the throne on the opening of parliament, and select committees were appointed in both years to inquire into it. The law had neither prevented great fluctuation in prices nor agricultural distress. This unsteadiness of price was complained of by persons engaged in manufactures and trade; for, assuming the consumption of Great Britain to be 16,000,000 quarters of wheat, the sum paid for a year's consumption would be about 31,000,000*l.* in 1835, while the same quantity would cost 56,000,000*l.* in 1839. The difference, amounting to 25,000,000*l.*, was withdrawn from the usual channels of circulation, and created stagnation in the different branches of non-agricultural industry. The new principle of a sliding-scale of duty required time and variety of circumstances fully to develop its effect; but it was at length placed beyond a doubt that the manner in which the scale was arranged tended to give a gambling character to the corn trade, which, instead of being a steady branch of commerce, was subjected to sudden movements and speculative operations. In one year (1838) the duty underwent thirty different changes from January to the end of November, and in the short period of two weeks went up from 1*s.* to 10*s.* 8*d.* the quarter. It was generally believed that, about the period of harvest, fraudulent returns were made of corn sold, with a view of raising the average price, and consequently lowering the duty; and it was quite certain that the scale operated in such a manner as to check the supplies of foreign grain until prices reached their maximum and the duty fell to the lowest point. "The gain of speculators is calculated not only on the *advance* in the price of corn, but also in the *fall* in the scale of duty; and as the duty falls in a greater ratio than the price of the corn rises, the duty operates as a bounty to withhold sales." (Salomons, *On the Operation of the Sliding Scale.*) When, for example, the average price in the home market was 66*s.*, the duty was 20*s.* 8*d.*, and on prices reaching 73*s.* the duty was only 1*s.*; the difference of profit to the importer was thus 7*s.* by the advance of prices, and 19*s.* 8*d.* by the fall of duty, making a total of 26*s.* 8*d.* When the quantity of wheat in bond had been liberated at the lowest duty the object of the speculators was attained, and to some of them, doubtless, the trade became an object of indifference until another opportunity occurred for availing themselves of the gambling capabilities of the sliding scale. The transactions in the corn trade of the year 1838 exhibited several of the inherent evils of this scale: first, as causing scarcity; secondly, as glutting the market just at the period when home produce was coming in; and, thirdly, by violently disturbing prices and overthrowing all the calculations on which a steady trade must be founded. In the second week of January the duty was 34*s.* 8*d.*, and it declined gradually until September 13th, when it reached 1*s.*, the lowest point. During this period prices were rising in the home market;

but instead of the foreign corn in bond being gradually admitted for consumption, there were only about 33,000 quarters entered from the beginning of the year up to the end of August, though the average price for that *month* was 74*s.* 8*d.* The speculators *waited* until the second week of September, when, by having withheld the supply, the duty became nominal, and in a single week 1,514,047 quarters of foreign wheat were thrown upon the markets. This *sudden* addition to the supply occasioned a decline of prices, and the duty again rose. The progress of the duty in the short space of six weeks was as follows:—

		s.	*d.*
Week ending Sept.	13th . . .	1	0
„ „	20th . . .	2	8
„ „	27th . . .	10	8
„ Oct.	4th . . .	16	8
„ „	11th . . .	20	8
„ „	18th . . .	21	8
„ „	25th . . .	22	8

A cargo which arrived at the end of September, instead of the middle of the month, would have been subject to a duty of 10*s.* 8*d.* instead of 1*s.* per quarter. It would then be bonded, and might remain in the warehouses until actually unfit for use. In a parliamentary paper (No. 46, Sess. 1839) it is stated that 899 quarters of foreign wheat were abandoned and destroyed that year in the port of London.

Another natural effect of the sliding scale was to limit the radius of supply. Buyers rushed into the markets of Hamburg, Danzig, and the Baltic ports, and, by competition within a narrow circle, raised the prices to an excessive height, in reliance upon the profits to be obtained by speculating upon the lowest duty. The unsteadiness of the trade did not encourage that demand for our manufactures which would have sprung up if it had been less subject to impulsive starts. The derangement of monetary affairs was a necessary consequence of a trade conducted under these circumstances; and the value of merchandise of all kinds declined from sales being forced in order to meet engagements at a time when money had been rendered scarce by the drain of remittances for corn.

In years when the crops were of inferior quality another disadvantage of the sliding scale was experienced. There was not in this case a general scarcity, but there was an excessive scarcity of wheat of good quality; and the quantity sold of an inferior quality depressed the average prices, and raised the duty so as to exclude a supply of sound foreign wheat except at the most extravagant prices.

On the 7th of May, 1841, after the injurious operation of the sliding scale had long been obvious, Lord John Russell, as the organ of the government, announced the intention of substituting a fixed duty, which had not hitherto been adopted under any of the numerous acts for regulating the importation of foreign corn. The fixed duties which Lord John Russell proposed were as follows:—

Wheat	8*s.*	0*d.*	per quarter.
Rye, peas, and beans	5	0	„
Barley	4	6	„
Oats	3	4	„

The proposed duty of 8*s.* on wheat exceeded by 2*s.* 4*d.* the duty (5*s.* 8*d.*) which had actually been paid on all wheat imported during the thirteen years that the sliding scale had been in operation, and by 4*s.* 5*d.* the duty per quarter paid on the importation of four and a half million quarters imported in 1838 and 1839; but a fixed duty would have rendered the trade steady; the supplies would have come into the market gradually as they were wanted, when the bonus which the sliding scale offered for withholding them was withdrawn; and they would also have been procured at a less cost than when speculators suddenly rushed into the foreign markets. But in the general election which took place in June and July, 1841, the government was defeated, and shortly after the parliament had assembled the ministry resigned office.

The government which had been overthrown at the general election partly in consequence of the plan for the proposed alteration of the corn-law, was replaced by one which was raised to office in a great measure by the agricultural interest, who probably now felt confident that the corn-laws would not be thrown into the "lottery of legislation." The

prime minister, however, knew too well that at least such a change as would mitigate the evils of the sliding scale of 1828 was at all events essential; and in the speech from the throne, 3rd February, 1842, her majesty recommended to the consideration of parliament "the state of the laws which affect the import of corn, and of other articles the produce of foreign countries." On the 9th Sir Robert Peel brought forward the government plan, in which a sliding scale of duty was still retained, but instead of the duty successively falling from 10*s.* to 6*s.* 8*d.*, 2*s.* 8*d.*, and 1*s.*, it was proposed to have two stationary points of price, and with these exceptions (52*s.* to 55*s.*, and 66*s.* to 69*s.*), the duty would only fall 1*s.* for each increase of 1*s.* in the average price. On the 7th April the new corn bill was read the third time in the Commons; on the 22nd of April it was read the third time in the Lords; and on the 29th of the same month the act (5 Vict. c. 14) came into operation.

Under the act 9 Geo. IV. c. 60, which regulated the foreign trade in corn from the 15th of July, 1828, to the 29th of April, 1842, the total quantity of foreign wheat admitted was 13,562,856 quarters and 4,305,150 cwts. of foreign wheat-flour, and, in addition, at a lower rate of duty, 597,700 quarters of colonial wheat and 1,744,591 cwts. of colonial flour. Nearly one-half of the foreign wheat and flour was admitted at the lowest rate of duty, and comparatively little at the higher rates, as the following statement will show:—

Duty at	Wheat.	Wheat-flour.
1*s.*	5,788,045 qrs.	1,758,372 cwts.
2*s.* 8*d.*	2,880,613	862,262
6*s.* 8*d.*	1,997,226	519,123
10*s.* 8*d.*	820,342	243,120

The average rate of duty for the period was under 6*s.* the quarter. For the whole period during which the act was in operation the average price of wheat in England and Wales was 59*s.* 4*d.*, and the extreme points of fluctuation in the weekly averages were from 36*s.* 8*d.* to 81*s.* 6*d.*, or 122 per cent. The highest yearly average was 70*s.* 8*d.*, in 1839; and the lowest 39*s.* 4*d.*, in 1835. The largest quantity of wheat and wheat-flour in the warehouse at the end of any month was 1,006,832 quarters in August, 1840. The year of largest importation was 1839, when 2,711,723 quarters of wheat and wheat-flour were admitted for home consumption. In 1835 the quantity admitted was only 28,554 quarters, and in the following year only 30,107 quarters. In 1839 and 1840 the duties on foreign and colonial corn and grain yielded above a million sterling each year: in 1839 1,098,849*l.*, and in 1840 1,156,660*l.*

IX.—*From April 29th*, 1842.

The following is the scale of prices and rates of duty for foreign wheat under 5 Vict. c. 14:—

Average per Qr.			Duty per Qr.	
s.		*s.*	*s.*	*d.*
	If under	51	20	0
51	„	52	19	0
52-3-4	„	55	18	0
55	„	56	17	0
56	„	57	16	0
57	„	58	15	0
58	„	59	14	0
59	„	60	13	0
60	„	61	12	0
61	„	62	11	0
62	„	63	10	0
63	„	64	9	0
64	„	65	8	0
65	„	66	7	0
66-7-8	„	69	6	0
69	„	70	5	0
70	„	71	4	0
71	„	72	3	0
72	„	73	2	0
73 & upwards.			1	0

The lowest rate of duty (1*s.* per quarter) occurs for rye, peas, and beans, when the price is 42*s.* and upwards the quarter; on barley when the price is 37*s.*; and on oats when the price is 27*s.* and upwards. The lowest duty for wheat is not reached by jerks, as in the former scale, by which the duty fell at each increase of 1*s.* in price from 10*s.* 8*d.* to 6*s.* 8*d.*, and next to 2*s.* 8*d.* and 1*s.*, and the "rest" between 66*s.* and 69*s.* is an important modification. Still, like the preceding scale, the present one does not admit of a steady trade with every country which has corn to export;

and it is in fact only a mitigated evil. One hundred and thirty-eight new towns were added by 5 Vict. c. 14, to the one hundred and fifty which returned the average prices under the act of 1828. The average duty for six weeks regulates importation as under the previous act.

From April 29th, 1842, to 5th January, 1844, the quantity of foreign wheat entered for consumption was 3,464,618 quarters; foreign wheat-flour 554,559. The lowest rate of duty was 8*s.* per quarter, at which 2,105,484 quarters of wheat and 427,579 cwts. of wheat-flour were entered: 740,149 quarters of wheat were entered at a duty of 14*s.* In 1844 the quantity of wheat and wheat-flour entered was 1,026,976 quarters, and of barley 1,029,021 quarters. The duty on foreign and colonial corn and grain in 1843 was 758,295*l.*, and in 1844 was 1,098,333*l.*

Since the passing of 5 Vict. c. 14, another change has been made in the corn law. Under the act of 1828 the duties on colonial wheat were 5*s.* when the price here was under 67*s.*, and 6*d.* when at or above 67*s.* the quarter. The act 5 Vict. c. 14, fixed the duties on colonial wheat as follows:—When the price here was under 55*s.* the quarter, the duty was 5*s.*;

55*s.* and under 56*s.*	. .	duty 4*s.*
56*s.* „ 57*s.*	. .	„ 3*s.*
57*s.* „ 58*s.*	. .	„ 2*s.*
58*s.* and upwards	. .	„ 1*s.*

The above are still the rates of duty charged on wheat imported from all other colonies, except Eastern and Western Canada; but the Canadian legislature having, at the suggestion of the home government, agreed to impose a duty of 3*s.* on all wheat imported into Canada, an act was passed (6 & 7 Vict. c. 29) in 1843, and came into operation 10th Oct., under which wheat from Canada, or flour manufactured there, will be at all times admissible into the United Kingdom at a fixed duty of 1*s.* per quarter charged here. For the five years ending January, 1843, the rate of duty on Canadian wheat averaged 2*s.* 1*d.* per quarter. The largest quantity of wheat and wheat-flour imported from Canada in any one year previous to this act was 259,600 quarters, in 1841, of which above two-thirds was in the shape of flour. The largest quantity in any one year from 1831 to 1840 was 193,985 quarters in 1832, and the average price of wheat in this country for that year was 58*s.* 8*d.*: the smallest quantity imported during the above nine years was 12,742 quarters in 1839, and the average price in England for the year was 70*s.* 8*d.* The importations of the last three years, and the average price of wheat in England, have been as follows:—

	Qrs.	Average price for the year.
1842	214,348	57*s.* 3*d.*
1843	138,100	50*s.* 1*d.*
1844	235,591	51*s.* 3*d.*

The quantity of wheat imported from the United States into Canada, at the 3*s.* duty, was 31,265 quarters, from 11th Oct., 1843, to 31st July, 1844.

There are now, it will be seen, three different regulations for the importation of corn—1. The foreign sliding scale; 2. The colonial sliding scale; 3. The fixed duty for corn and flour from Canada. There is not the slightest reasonable pretext for denying to other and more distant colonies the advantages which Canada enjoys. Wheat can be grown in South Australia at 2*s.* 6*d.* or 2*s.* 9*d.* per bushel, and in Van Diemen's Land at 3*s.* 9*d.*; its quality in both colonies is of very superior quality, and the small quantities which have reached this country commanded a high price. It is packed in bags, while corn from Canada is stowed in bulk, and the expenses of transit from Australia to England are at least 20*s.* the quarter. To subject corn, the produce of countries at the antipodes, to the uncertainties of a scale of duty here, which fluctuates from 1*s.* to 5*s.*, is to stifle the trade. In most of the British colonies the population are generally all too much engaged in producing the same commodities to permit of any great activity in the exchange of the products of their industry amongst themselves. This keeps them in a languishing condition, and even lowers their general civilization. The agriculturist who emigrates from England to one of the colonies finds that his industry will not

obtain for him the conveniences and moderate luxuries which are not only a reward for toil, but are essential even to prevent his falling into a state of semi-barbarism. To open a market for his produce is one of the first means of improving his condition both materially and morally; and though by rendering the trade in corn with all the colonies perfectly free the quantity which could be exported would be insignificant to the mother country, to the colonists it would be of the greatest benefit. In 1844 a motion to admit corn from the Australian colonies at a small fixed duty was opposed by the government on the ground that it would produce an agricultural panic in England. New South Wales is an importing country, and requires on an average about 24,000 quarters of wheat annually, about a third of which is supplied by Van Diemen's Land. In a year or two South Australia might be able to export 100,000 quarters of wheat to England, and the capabilities of Van Diemen's Land for the production of wheat are very great, but as there is no steady market the surplus which is raised is necessarily small; and New South Wales receives a less supply from Van Diemen's Land than from Valparaiso. From some parts of British India wheat of good quality could be exported to England if the duties were abolished or fixed at a nominal amount. The question of placing the colonial corn trade on a more favourable footing has been urged by the governors of Van Diemen's Land, South Australia, Western Australia; and a petition from the Agricultural and Horticultural Society of India has just been presented (April, 1845), urging the same prayer. So reasonable a demand cannot be long withheld.

The quantity of corn, grain, meal, and flour imported into Great Britain from Ireland has sometimes exceeded 3,000,000 quarters. In 1844 the importations were —Wheat and wheat-flour 440,153 qrs.; oats and oatmeal 2,242,310 quarters; barley 90,655; and smaller quantities of other grain.

For some notice of the Corn Trade of antiquity, see CORN TRADE, ANCIENT, and CORN TRADE, ROMAN.

CORN-RENT is a money rent varying in amount according to the fluctuations of the price of corn. In some countries rent is paid in the produce of the land itself [METAYER RENTS]; but in no part of the United Kingdom does this primitive custom exist. Some landlords in Ireland, indeed, for the accommodation of their tenants, agree to accept corn in payment of their rent, at the price of the nearest market, and ship it to England for sale; but the rent is calculated in money. (See Appendix F to *First Report of Poor Laws* (Ireland) *Commissioners*, 1836, p. 221.)

A corn-rent is founded upon the principle that a farm being assumed to grow, upon an average, a certain quantity of produce, the value of such proportion of that produce as may be agreed upon, shall be paid to the landlord as rent. But as the prices of all produce are liable to considerable variation, and as the profits arising from the land must generally be mainly dependent upon the prices for which the produce is sold, it is supposed to be equitable to the farmer, that the money value of that portion of the produce which he pays as rent should be calculated so as to vary with prices, instead of being determined by any arbitrary or unvarying standard. And it is undeniable, that with long leases a corn-rent is a security against the growth of any serious disproportion between the rent originally agreed upon and the actual value of the produce of the land. If the farmer, under the security of a long lease, lay out capital upon the land and thus increase the quantity of produce, he derives the entire benefit arising from increased production, as the quantity to be paid as rent has already been agreed upon; and he is secured against loss caused by a fall in prices, as the amount of his rent is governed by prices.

For the purpose of assessing a corn-rent the average price of wheat alone, or of wheat and other grain, is taken—sometimes for the last year, and sometimes for a certain number of years. If the price for one year only be taken, the results to the farmer may be thus stated. When prices are low from a limited demand for produce, his rent is reduced; and when

they are low from increased production, his rent is still reduced, although he has more produce than usual to sell. When prices are high from an increased demand, he has more rent to pay, but the remunerative prices enable him to pay it easily; but when an advance of prices is caused by scarcity, his rent is raised, while the high prices may be counterbalanced by the diminished quantity of produce which he has to sell. Thus in three cases out of four a corn-rent is favourable to the farmer; and even in the fourth case he is secured from loss by its favourable operation in other years. In some leases, also, a further advantage is given to him by fixing a *maximum* price: and thus if prices should happen to rise beyond that point, he derives the whole profit accruing from the difference. Under this system of annual averages, so advantageous to the farmer, there is a certain degree of unfairness to the landlord, which is sometimes corrected by assessing rent upon the average price of different kinds of produce for a certain number of years; by which means a just proportion is maintained between the money-rent and the average annual value realized from the land. It is upon this principle that the tithe rent-charges are calculated, from the average price of grain for seven years [TITHES]; and corn-rents are sometimes regulated by the scale of average prices published annually for the purposes of the Tithe Commutation Act. In Wiltshire some farms are let in this manner, but their number is inconsiderable. The rent of grazing and dairy farms cannot be regulated by the ordinary system of corn-averages; but in some of the dairy-farms of Cheshire the rent is determined by the average price of wheat and of cheese. In many parts of the south of Scotland corn-rents are paid according to the *fiar* prices of corn, as determined in each county by a jury summoned by the sheriff for that purpose.

The principle of a corn-rent is by no means of recent origin; for by an act 18 Elizabeth, § 6, it was required that in all future leases granted by the colleges in the universities of Oxford and Cambridge, and by the colleges of Winchester and Eton, one-third part, at least, of the old rent shall be reserved and paid in good wheat at 6*s.* 8*d.* the quarter or under, and good malt at 5*s.* the quarter or under: or shall be paid in ready money after the rate of the best wheat and malt sold at the nearest market. (*Journal of the Royal Agricultural Society*, vol. v. p. 84, 177; see also Index to *Report on Agricultural Distress*, 1836.)

CORN-TRADE, ANCIENT. The production of corn, one of the chief necessaries of life, and its commercial exchange, have been a subject of the first importance in all ages. It is proposed here to state briefly the general nature of the trade in corn among two of the states of antiquity to whom we are mainly indebted for our knowledge of the economical condition of antient times. There are few important political questions at the present day to which we cannot find something similar in former times; and the blunders of antient legislation may still be instructive to modern statesmen.

The small and comparatively barren territory of Attica did not produce sufficient corn for the consumption of the inhabitants. Corn was brought into the Piraeus, the port of Athens, from the countries bordering on the Black Sea, Syria, Egypt, and other parts of Africa, and from Sicily. Demosthenes asserted (B.C. 355) that the Athenians imported more grain than any other people. (*Against Leptines*, c. 9.) But the trade in corn between Greece and the Black Sea was of some magnitude at a much earlier date. In B.C. 480, Xerxes, while at Abydos on his way to the invasion of Greece, saw the corn-ships that were sailing from the Black Sea and through the Dardanelles and carrying corn to Peloponnesus and Ægina. (Herodotus, vii. 147.) Some parts of the country on the coast of the Black Sea now export grain, and probably have exported grain ever since the time of Xerxes.

The importation of grain into Attica was a matter that was protected and regulated by the state; and instances are mentioned of armed ships convoying the corn-vessels from the Black Sea to the Piraeus. The exportation of corn from Attica was forbidden; and only one-third of the

foreign corn that was imported into the Piraeus could be re-exported to other countries: this law as to importation was enforced by the overseers of the harbour. The law interfered with the trade in corn in other ways also, with the intention apparently of keeping prices low; but with what success it is easy to conjecture. Engrossing or the buying-up of corn was a serious offence: a man could not purchase more than fifty loads (called φορμοί). The amount of these loads cannot be exactly ascertained, nor is it material: the principle is clearly shown by the limitation. The penalty for violating this law was death. Boeckh (*Public Economy of Athens*, Eng. transl.) states the law thus: "in order to prevent the accumulation and hoarding of corn, engrossing was very much restricted; it was not permitted to buy at one time more than fifty such loads as a man could carry." According to this a man might buy fifty loads as often as he pleased at different times. But the meaning of the passage of Lysias appears to be that a man must not buy up corn so as to have on hand more than fifty loads at a time. This interpretation is consistent with the Greek, and the other is not; and it is not open to the same kind of objection that Boeckh's interpretation is.

The absurdity of the Athenian legislation on the trade in corn appears from a speech of Lysias against the corn-dealers (Κατὰ τῶν Σιτοπωλῶν). The corn-dealers were generally aliens, and their business made them objects of popular detestation: it was alleged that they bought up corn and refused to sell it when it was wanted, and thus compelled the buyers to pay them their own price. Yet it is stated by Lysias that the law was, that a dealer must sell his corn only one obolus dearer (the medimnus?) than he bought it. Thus the law attempted to fix the maximum profit of the dealers. But they evaded the law according to the same authority by selling it a drachma (six oboli) higher on the same day; the meaning of the orator here is not quite clear. The orator states that the hope of great gain made the dealers run the risk of the extreme penalty of the law. He urges the court which was then sitting for the trial of some of the corn-dealers whom he was prosecuting, to enforce the penalty against them, and so make them mend their manners; and he represents both the consumers and the importers of corn as suffering from the combinations of the dealers. A more signal instance of absurdity and commercial ignorance is not extant than this oration.

To carry the laws as to the sale of corn into effect, the Athenians had Corn Wardens (σιτοφύλακες) who kept an account of the corn that was imported, inspected flour and bread, and saw that they were sold of the weight and at the price fixed by law.

Various enactments were made with a view of securing a supply of corn; such as that no money should be lent on a vessel which did not bring back to Athens a return cargo of goods, among which corn was mentioned; and that no person living in Attica should import corn to any place except the port of Athens. The interests of individuals, and ultimately the real interests of the community, were thus set in opposition to the supposed interests of the state, and evasions of the laws are often spoken of. Individuals attempted what they will always do, to sell their grain at the dearest market. (Xenophon, *Œconom.*, c. 20.)

There were public corn-warehouses at Athens, in which corn was lodged that had been purchased at the expense of the State, and sometimes as it appears, by private contributions. There were officers appointed to purchase the corn (corn-buyers, σιτῶναι) and persons to give or measure it out (ἀποδέκται). Corn so purchased was probably sold to the people at a low price, and sometimes also there were gratuitous distributions of it, as at Rome; and occasionally, as at Rome also, presents of grain were received from foreign princes or rich persons, and distributed among the people gratis.

This subject has been investigated by Boeckh, *Public Economy of Athens*, translated by G. C. Lewis, 2nd edition, revised, 1842; and these remarks are mainly founded on what is said there. The subject is curious, but unfortunately, as we must collect our information mainly from

detached passages of the Athenian orators, who deal largely in falsehood and exaggeration, it is not possible to arrive at certainty on some points.

CORN-TRADE, ROMAN. What we know of the ancient corn-trade of Italy mainly relates to the city of Rome. From an early period it belonged to the administration to see that the city was duly supplied with grain. The immediate neighbourhood of Rome did not supply the wants of the city, and grain was imported into Rome from the country of the Volsci and from Cumae soon after the establishment of the consular government. (Livy, ii. 9.) An importation of corn from Sicily is mentioned by Livy (ii. 41) under the year B.C. 486. As the Romans extended their empire, and provincial governments were formed, such as those of Sicily and Sardinia, supplies of grain were got from foreign parts. After the conquest of Sicily, the proprietors were allowed to keep their lands on condition of paying a tenth of the produce to the Romans, according to the system which had been established by King Hiero. Sardinia, after the conquest, paid the same (Livy, xxxvi. 2). The mode of proceeding, as to the tenths in Sicily, was this. The cultivator gave notice of what quantity of land he intended to sow, and an entry was made of it. The Roman State took the tenth of the produce in kind, which the cultivator was bound to convey to some port in Sicily, where it was embarked for Rome. All the wheat produced by the tenths was entered in the public books, and it was all conveyed to Rome or to the armies; this at least appears to have been the general rule.

Sometimes two-tenths of the produce were claimed by the Roman State (Livy, xxxvi. 2; xxxvii. 2), but in this case the second tenth was paid for out of the Roman Aerarium. Presents of grain from foreign states and princes were sometimes made to the Romans (Plutarch, *C. Gracchus*, c. 2). Thus it appears that the State undertook to provide the chief supply of grain for the city: the grain was sometimes sold, and sometimes distributed gratis among the poor, a practice which became common under the late Republic. Besides these distributions of corn at the public expense, the wealthy Romans who sought popularity sometimes made like distributions of corn among the poorer citizens, as M. Crassus the Rich did in his consulship (Plutarch, *Crassus*, c. 2, 12).

It does not appear, then, that the chief supply of corn for the city of Rome during the Republic was furnished in the regular way of trade. It was the business of the State to keep the proper supply of corn for the city in the public warehouses; but the supply was not always equal to the demand, and it also often happened that many people could not afford to pay the price. Scarcity was not uncommon both under the Republic and the Empire.

In Livy (iv. 12) we have a notice of the creation of a Praefectus Annonae, or Superintendent of Provision, L. Minucius, B.C. 440, in a season of scarcity. He exercised his office in an arbitrary manner, by compelling persons to state what corn they had in their possession, and to sell it; and he endeavoured to raise a popular clamour against the corn dealers; if Frumentarii here means private dealers. Cn. Pompeius Magnus was intrusted with the superintendence of Provision for five years. (Cicero, *Ad. Attic.*, iv. 1.) Augustus, at the urgent importunity of the people, took on himself the office of Praefectus Annonae, such as Pompeius held it. (Dion Cassius, liv. 1.)

Under the early Republic many parts of Italy were well cultivated, and Rome, as already observed, derived supplies of corn from various parts of the Peninsula. But the civil wars which devastated Italy near the close of the Republic were injurious to agriculture. Murder and proscription thinned the numbers of the people, and life and property were insecure. Many of the lands changed owners, and the property of those who were cut off by violence fell into the hands of others, and chiefly of the soldiers. These and other causes made Italy less productive about the time of the Christian æra than it had been some centuries earlier. Even under the peaceable administration of Augustus, 60,000,000 modii of wheat were annually imported into Italy and Rome from Egypt and the Roman province of Africa. The modius is estimated at 1 gallon and 7·8576 pints, English

measure. But this did not prevent scarcity: there was a great famine at Rome in the latter part of the administration of Augustus (Dion Cassius, lv. 26; Vell. Paterc. ii. 104; Suetonius, *Augustus*, c. 42). The general administration of Tiberius, the successor of Augustus, is commended by Tacitus (*Annal.* iv. 6). He endeavoured to secure a proper supply of corn by intrusting to the Publicani the management of the tenths of grain from the provinces; but there was a great famine in his time, and the high price of grain almost caused an insurrection. The emperor showed that he had not neglected this important part of the administration: he published a list of the provinces from which corn was brought, and he proved that the importation was larger than in the time of Augustus (Tacit. *Annal.* vi. 13). Again, under the administration of the Emperor Claudius, a famine in Rome occurred (Tacit. *Annal.* xii. 43). Tacitus observes that during the scarcity Claudius was assailed with menaces while he was seated on the tribunal in the forum, and he only escaped by the aid of his soldiers. He adds there were only fifteen days' provisions in the city; and "formerly Italy used to export supplies for the legions to distant provinces; nor is Italy now barren, but men prefer cultivating Egypt and Africa, and the existence of the Roman people is intrusted to ships and the dangers of the sea." Claudius subsequently paid great attention to the supplying of Rome with corn. Under Nero, the successor of Claudius, there was a famine at Rome (Suetonius, *Nero*, c. 45).

The comparison of antient and modern prices of grain is a difficult subject, and the results hitherto obtained are not satisfactory. It is also necessary to be careful in considering the circumstances when any prices are mentioned. P. Scipio on one occasion (B.C. 200) sent a great quantity of corn from Africa, which was sold to the people at four asses the modius (Livy, xxxi. 4). In the same book of Livy (c. 50) another sale is mentioned at the rate of two asses the modius. But on these, as on many other occasions, these prices were not the market prices at which wheat would have sold, but they were the lower prices at which the State sold the grain in order to relieve the citizens. Rome, both under the Republic and the early Empire, suffered occasionally from scarcity or from high prices of grain. It is possible that a supply might have readily been procured from foreign parts if there had been a body of consumers in Rome to pay for it. But the export of grain to Rome was not a regular trade; it was, as above explained, a system by which the Romans drew from their provinces a contribution of corn for the consumption of the capital, and it was not regulated by the steady demand of an industrious class who could pay for it. The reign of Tiberius appears to have been a period of scarcity; the complaints were loud, and the emperor fixed the price of corn in Rome, and he promised to give the merchants a bounty of two sesterces on the modius. This seems to mean that the emperor fixed the prices for all grain, including whatever private merchants might have; but to make them amends for any loss, he paid them part of their prices out of the treasury. After the fire at Rome, in the time of Nero, Tacitus speaks of the price of corn being lowered to three sesterces the modius. Under the reign of Diocletian, the emperor, by an edict, fixed the prices of all articles through the Roman Empire. The reason for this measure is stated, in the preamble to the edict, to be the high market price of provisions, which is attributed to the avarice of the dealers, and was not limited even when there was abundance (Inscription of Stratoniceia; see an Edict of Diocletian, fixing a maximum of prices throughout the Roman Empire, A.D. 303, by Colonel Leake, London, 1826, 8vo.).

It does not appear whether the grain which was brought to Rome from the provinces was brought in public ships, or in private ships, by persons who contracted to carry it. There seems, however, to be no doubt that there was also importation of corn by private persons, and that there were no restrictions on the trade, for the object was to get a full supply. A constitution of Valentinian and Valens (De Canone Frumentario Urbis Romæ, Cod. xi. tit. 23), declares that merchants (nau-

tici) were to make a declaration of the grain which they imported before the governors (of provinces) and the magistrates, and that they had only good corn on board; and it was the business of the anthorities to see that the grain was good. The provisioning of Constantinople, Alexandria, and probably other great cities, under the later Empire, was subject to regulations similar to those of Rome, and there were public granaries in those cities.

It is almost impossible to collect from the scattered notices in the Roman writers a just notion of the nature of the trade in grain. So far as concerns Rome, we can hardly suppose that there was a regular trade in our sense of the term. The chief supply of grain was provided by the State. That which is best left to private enterprise was undertaken by the government. It is true that the condition of Rome was peculiar under the late Republic and the Empire. The city was full of paupers, who required to be fed by occasional allowances of corn. The effect, however, of the State purchasing for the people was not a certain supply, but occasional scarcity. Whether a State undertakes to buy for the people what they may want for their consumption, or regulates the trade by interfering with the supply, is immaterial as to the result. In either case the people may expect to be starved whenever corn is scarce. The Roman system was to import all that could be got into Rome, but it was not left to private enterprise. There was no exclusion of foreign grain in order to favour the Italian farmer; nor can it be said that the Italian farmer suffered because foreign grain was brought into Rome and other parts of Italy; he could employ much of his land better than in growing corn for Rome and sending it there. Corn came from countries which were better adapted to corn-growing than many parts of Italy; and besides this, the transport of grain from many foreign parts to Rome, such as Sardinia, Sicily, and the province of Africa, would be as cheap as the transport of grain by sea from the remote parts of Italy, and much cheaper than the transport by land. The English foreign corn-trade is regulated with the avowed purpose of giving the English wheat-grower a high or what is considered a sufficient price, without any consideration of the pecuniary resources of those who have to buy corn. By interfering with the free trade in grain, the English system keeps the price unsettled, and exposes the people in times of scarcity to the danger of famine; for when a bad harvest occurs in England, the deficiency must be made up from abroad, and the price must be paid for it, whatever that price may be, which must always be paid for an article that is suddenly in demand, and is not an article of regular supply. The two systems were equally bad, but bad in a different way. The Roman system was founded on ignorance of the true nature of trade, and it was closely connected with the vices of the political constitution. The English system is founded partly on ignorance, and partly on the wish of the landowners, who possess a preponderating political power, to keep up their rents, which are derived from the lands which their tenants cultivate.

The essay of Dureau de la Malle, 'De l'Economie Politique des Romains,' and the treatise of Vincentius Contarenus, 'De Frumentaria Romanorum Largitione,' in Grævius, Antiq. Rom. Thesaurus, vol. viii., contain most of the facts relating to the supply of corn to Rome; and both have been used for this article.

CORNET, a commissioned officer in a regiment of cavalry. He is immediately inferior to a lieutenant, and his rank corresponds to that of an ensign in a battalion of infantry.

The word is derived from the Italian *cornetta*, signifying a small flag; and hence, both in the English and French services during the sixteenth and seventeenth centuries, it was applied not only to the officer who had charge of the standard, but to the whole troop, which seems then to have consisted of 100 men and upwards, and to have been commanded by a captain.

The full-pay of a cornet, which is the same in all the regiments of cavalry in the British army, is 8*s.* per day, or 146*l.* a year, and the half-pay is 3*s.* 6*d.* a day. In 1845 there were on full-pay twenty-four cornets in the household cavalry and

one hundred and fifty in the cavalry of the line, constituting a charge of 25,404*l.* a year.

CORONATION, the act of crowning or consecrating a king. This rite is of remote antiquity, as may be gathered from the notices which we have in Scripture, in the first and second books of Kings, of the coronations of Solomon, and of Joash the son of Ahaziah, of the latter of whom it is said that Jehoiada the priest took him, put the crown upon his head, and gave him the testimony, and they made him king, and anointed him.

In England, after the kingdoms of the Heptarchy had become united, we find the ceremony of coronation alluded to in the Saxon Chronicle, under the term "gehalgod," by which is expressed that the king was hallowed or consecrated. Kingston-upon-Thames was the place where the Saxon kings were crowned during nearly the whole of the tenth century. (See Diceto and the other historians in the *Decem Scriptores.*) Edgar, who succeeded to the throne in 959, is said to have been crowned either at Kingston or at Bath. Edward the Confessor was crowned at Winchester in 1042. The copy of the Gospels upon which the Saxon kings were sworn at their coronations is believed to be still preserved amongst the Cottonian Manuscripts in the British Museum, in the volume Tib. A. ii. Harold and William the Conqueror were crowned at Westminster. It was customary with the Norman kings to be crowned more than once. Henry II. crowned his eldest son, and associated him with himself in the administration during his own life.

In one or two instances, in the Norman times, we find the regnal years of our kings dated from their coronations only; the previous time, between the predecessor's death and the performance of the inaugural ceremony, was considered as an interregnum. This is a fact of no small importance to those who would accurately fix the dates of public instruments and transactions in the reigns of Richard I., John, and their successors.

The first English coronation of which we have any detailed account is that of Richard I., in the Histories of Diceto and Bromton. (Twysden, *Script.* x. coll. 647, 1157.) An account of all the formalities observed at that of Richard II., taken from the 'Close Rolls,' is in Rymer's 'Fœdera,' the old edition, vol. vii. p. 157. Froissart has given a short but interesting narrative of the coronation of Henry IV., which is printed in the English edition of his 'Chronicle,' by Lord Berners, 4to., London, 1812, vol. ii. pp. 753, 754. The details of the English coronations of Henry V. and VI., and of that of Henry VI. in France, are contained in the Cottonian Manuscripts, Tib. E. viii. and Nero C. ix. Hall and Grafton have described the ceremonies at the coronation of Richard III. The account of the coronation of Henry VIII., with the king's oath prefixed, interlined and altered with his own hand, is likewise preserved in the Cottonian Manuscript already mentioned, Tib. E. viii. The oath, with its interlineations, is engraved in facsimile in the first volume of the second series of Ellis's 'Original Letters illustrative of English History.' Fuller, in his 'Church History,' and Ellis's 'Letters,' 1st Ser., vol. iii. p. 213, detail the particulars of the coronation of Charles I. Several editions of the Form and Order of Charles II.'s coronation at Scone in 1651 were published at the time in 4to. at Aberdeen; reprinted at London in folio, 1660; and the entertainment of Charles II. in his passage through London to his coronation, with a narrative of the ceremony at the coronation, by John Ogilby, with plates by Hollar, fol., London, 1662. Sandford's 'History of the Coronation of James II.,' fol. London, 1687, illustrated with very numerous engravings, is the most complete of all our works upon English coronations published by authority. That of George IV., of which two portions only appeared, was far more splendid, with coloured plates, but remains unfinished.

A very antient MS. of the ceremonial of crowning the German emperors at Aix-la-Chapelle was purchased at the last of the sales of Prince Talleyrand's libraries, by the late Mrs. Banks, and is now among the additional manuscripts in the British Museum. Of foreign published coronations, that of Charles V. at Bologna

as emperor, in 1530, is one of the most curious, engraved in a succession of plates upon a roll of considerable length. The 'Sacre de Louis XV., Roy de France et de Navarre, dans l' Eglise de Reims, 25 Oct. 1722,' is a work of pre-eminent splendour, full of finished engravings. The 'Description of the Ceremonies at the Coronation of Napoleon as Emperor of France, with his Consort Josephine, 2 Dec. 1804,' is a work of equal size, but the engravings are chiefly in outline: folio, Paris, 1807. There is a volume, with engravings, of the coronation of the Empress Anne of Russia, fol. Petersburg, 1731; and many others might be enumerated.

The formulary which has served as the general model for the English coronations since the time of Edward III. is the 'Liber Regalis,' which is deposited in the archives of the dean and chapter of Westminster. It is supposed to have been written for the particular instructions of the prelates who attended at the coronation of King Richard II. and his queen. Copies of this manuscript, without its illuminations, are preserved in one or two of our manuscript libraries. The substance of the ceremonial directed in it is abridged in Strutt's 'Manners and Customs,' vol. ii. p. 22-37.

The following is the form of and ceremonial in administering the *Coronation Oath* to our kings:—Sermon being ended, and the King having made and signed the declaration, the Archbishop goes to the King, and standing before him, administers the Coronation Oath, first asking the King—"Sir, is your Majesty willing to take the Oath?" and the King answering, "I am willing;" the Archbishop ministereth these Questions; and the King, having a Copy of the printed Form and Order of the Coronation service in his hands, answers each Question severally as follows:—

Archb. "Will you solemnly promise and swear to govern the People of this United Kingdom of *Great Britain and Ireland*, and the Dominions thereto belonging, according to the Statutes in Parliament agreed on, and the respective Laws and Customs of the same?"

King. "I solemnly promise so to do."

Archb. "Will you to your Power cause Law and Justice, in Mercy, to be executed in all your Judgments?"

King. "I will."

Archb. "Will you to the utmost of your Power maintain the Laws of God, the true Profession of the Gospel, and the Protestant Reformed Religion established by Law? And will you maintain and preserve inviolably the settlement of the United Church of *England* and *Ireland*, and the doctrine, worship, discipline, and government thereof, as by Law established within *England* and *Ireland*, and the territories thereunto belonging? And will you preserve unto the Bishops and Clergy of England and Ireland, and to the United Church committed to their charge, all such rights and privileges as by Law do or shall appertain to them, or any of them?"

King. "All this I promise to do."

Then the King arising out of his Chair, supported as before, and assisted by the Lord Great Chamberlain, the Sword of State being carried before him, shall go to the Altar, and there being uncovered, make his solemn Oath in the sight of all the People to observe the premises: laying his right hand upon the Holy Gospel in the Great Bible, which was before carried in the Procession, and is now brought from the Altar by the Archbishop, and tendered to him as he kneels upon the steps, saying these words:

"The Things which I have here promised I will perform and keep, So help me God."

Then the King kisseth the Book, and signeth the Oath. (See the *Form and Order observed in the Coronation of His Majesty King George IV.*, 4to., London, 1821.)

CORONER. The coroner (*coronator*) is an ancient officer by the common law of England. The name is said by Lord Coke to be derived "*a coronâ*," because he is an officer of the crown, and hath conusance in some pleas which are called *placita coronæ*." In this general sense the chief justice of the Court of King's Bench is by virtue of his office the supreme coroner of all England, and may, if he pleases, hold an inquest, or otherwise exercise the office of coroner, in any part of the kingdom. Lord Coke men-

tions an instance in which Chief Justice Fineux in the reign of Henry VII. held an inquest on the body of a man slain in open rebellion (5 *Reports*, 51). In this sense also, the Master of the Crown Office in the Court of King's Bench, is styled the "coroner or attorney for the king;" his business being confined to pleas of the crown discussed in that court. But the officers now usually understood by this term are the coroners of counties, who are of high antiquity, being said in one of the oldest treatises on the common law to have been ordained together with the sheriffs to keep the peace of counties when the earls gave up the wardship. (*Mirror*, c. i. § 3.) In early times too, the office appears to have been one of great estimation; for by the statute 3 Edw. I. c. 10, they are required to be knights, and by the 28 Edw. III. c. 6, they must be "of the most meet and most lawful men of the county." By the 14 Edward III. st. 1, c. 8, "no coroner shall be chosen unless he have land in fee sufficient in the county, whereof he may answer to all manner of people." No peculiar qualification is now required, though Serjeant Hawkins seems to express an opinion that the persons chosen, though not knights, must be "of good substance and credit." (Hawkins's *Pleas of the Crown*, book ii. cap. 9.) Most commonly there are three or four coroners in each county; but the number varies, and in some there are six or seven coroners. There have been instances in which, upon a representation made to the lord chancellor by the magistrates, that the existing number of coroners was insufficient for the business of the county, writs have issued for the election of additional coroners. (3 Swanston's *Reports*, 181.)

There are divers coroners for franchises and other separate jurisdictions. The dean of York, as custos rotulorum of the liberty of St. Peter's, in the city of York, appoints two coroners for the liberty. A coroner for the honor of Pontefract is appointed by letters patent under the seal of the duchy of Lancaster. Lords of manors or liberties in some cases appoint a coroner for their lordship. In Huntingdonshire there are five coroners, who are all so appointed. The archbishop of York and bishop of Ely appointed coroners before their secular jurisdiction was extinguished by 6 & 7 Wm. IV. c. 87. The bishop of Durham appointed the coroners for that county before the passing of 1 Vict. c. 64, "for regulating the coroners of the county of Durham." The constable of the Tower of London appoints a coroner for the Tower liberty. The coroner for the city and liberty of Westminster is appointed by the dean and chapter. By a charter of Edward IV. the mayor and commonalty of London may grant the office of coroner to whom they please, and no coroner except the city coroner shall have any power in the city.

Coroners of counties are elected under the direction of the stat. 28 Edw. III. c. 6, by the freeholders in the county court, in the same manner as sheriffs and conservators of the peace formerly were; the election takes place by virtue of an ancient king's writ, *De Coronatore Eligendo*, returnable in chancery. The 58 Geo. III. c. 95, which made provision for conducting these elections, similar to those for the election of knights of the shire, was repealed in 1844 by 7 & 8 Vict. c. 92, which substituted other regulations on the ground that the former mode of election was inconvenient and attended with great and unnecessary expense. This act applies only to county coroners. The coroners of the City of London and Borough of Southwark, of the Queen's Household and the Verge of the Queen's Palace, and Admiralty coroners, are specially exempted from the operation of the act. Counties may be divided by the justices into two or more districts for the purposes of this act, and alterations may be made in existing divisions. The justices, in making such divisions, are in the first place to petition her majesty, and notice is to be given to each coroner by the clerk of the peace of the time when the justices will take such petition into consideration. Any coroner of the county may present a petition to her majesty touching the proposed division or alteration of districts. Her majesty, with the advice of the privy council, may order that such county shall be divided into so many districts as may

be considered convenient, and determine at what place within each district the court for the election of coroner for such district shall be held. The justices are to direct the clerk of the peace to make out a list of the several parishes, townships, or hundreds in each of the coroner's districts into which the county is divided, specifying the place within each district at which the court for the election of coroner is to be held, the place or places at which the poll is to be taken, and the parishes or places attached to each polling place. The justices may then assign one district to each coroner; and whenever a vacancy occurs the election is to be made in the manner prescribed by the act, which provides that the coroner shall reside in the district for which he is elected, or in some place wholly or partly surrounded by such district, or not more than two miles beyond its outer boundary; that the election must be made in the district; and that the coroner shall be chosen by a majority of persons duly qulified who shall reside in such district: no voter can poll out of the district where his property lies. Within not less than seven or not more than fourteen days after the sheriff shall have received the writ De Coronatore Eligendo, he is required to hold in the district for which a vacancy has occurred a special county court for the election; and if a poll be demanded, it may be kept open for two days, eight hours each day, from eight o'clock in the morning. The sheriff is to erect polling-booths; poll-clerks are to be sworn; and an inspector of poll-clerks is to be appointed on the nomination of each one of the candidates. Electors may be required by or on behalf of any candidate to make oath respecting their qualification. The result of the poll is to be declared by the sheriff. The coroner, although elected for a district, is to be considered as a coroner for the whole county; but he is only to hold inquests within his own district, except in case of the illness or unavoidable absence of the coroner for another district; and his inquisition must certify the cause of his holding such inquest.

Coroners in counties are elected for life; but if they accept an office incompatible with the duties, such as that of sheriff, or dwell in a remote part of the county, or are incapacitated by age or infirmity, they are removable by means of the writ *De Coronatore Exonerando;* and by the stat. 25 Geo. II. c. 29, § 6, they may be removed upon conviction of extortion, wilful neglect of duty, or misdemeanor in their office. The Lord Chancellor has authority, however, independently of the above statute, to remove coroners for neglect of duty, upon petition presented by the freeholders of the county. (1 Jacob and Walker, *Reports*, 451.)

At common law the coroner had authority to hear and determine felonies; but his powers in this respect were expressly abrogated by Magna Charta, cap. 17. The article (G) *Officer* in Comyns' 'Digest' contains a statement of the various duties of the coroner in the king's house, and of the coroner in a county. The most usual duty of a coroner is that of taking inquisitions when any person dies in prison or comes to a violent or sudden death; and though his duties, as well as his authority in this respect, are said to have existed at common law, they are declared by the 4 Edw. I. stat. 2, commonly called the statute *De Officio Coronatoris*. His court is a Court of Record. By the directions of that statute, "the coroner, upon information, shall go to the places where any be slain, or suddenly dead or wounded, and shall forthwith command four of the next towns, or five or six, to appear before him in such a place; and when they are come thither, the coroner, upon the oath of them, shall inquire in this manner; that is to wit, if they know where the person was slain, whether it were in any house, field, bed, tavern, or company, and who were there; who are culpable, either of the act, or of the force; and who were present, either men or women, and of what age soever they be, if they can speak, or have any discretion; and how many soever be found culpable, they shall be taken and delivered to the sheriff, and shall be committed to the gaol; and such as be found and be not culpable, shall be attached until the coming of the judge of assize." And it is declared by the same statute, that "if it fortune any

such man be slain, which is found in the fields or in woods, first it is to be inquired whether he were slain in the same place, or not; and if he were brought and laid there, they should do so much as they can to follow their steps that brought the body thither, whether he were brought upon a horse or in a cart. It shall also be inquired if the dead person were known, or else a stranger, and where he lay the night before." It is declared also by the same statute, that "all wounds ought to be viewed, the length, breadth, and deepness; and with what weapons; and in what part of the body the wound or hurt is; and how many be culpable; and how many wounds there be; and who gave the wound." In like manner it is to be inquired by the coroner "of them that be drowned, or suddenly dead, whether they were so drowned or slain, or strangled by the sign of a cord tied straight about their necks, or about any of their members, or upon any other hurt found upon their bodies. And if they were not slain, then ought the coroner to attach the finders and all other in the company." The provisions of this ancient statute are still in force, and are to be followed by coroners in all their particular directions as nearly as possible at the present day in inquisitions of death. In case of a death happening upon the high sea, inquisitions are taken before the Admiralty coroner, who is appointed by the king or the lord admiral; and the county coroners have in such a case no jurisdiction. The inquisitions taken before the Admiralty coroner are returned to the Commissioners of the Admiralty under stat. 28 Hen. VIII. c. 15. Coroners ought to sit and inquire into the cause of death of all persons who die in prison. They have no jurisdiction within the verge of the king's courts. The coroner of the king's household has jurisdiction within the verge of the king's courts.

The coroner has authority to assemble a jury by means of a precept directed to the constables of the hundred or adjoining township, and jurors and witnesses who make default may, under 7 & 8 Vict. c. 92, be fined any sum not exceeding 40*s.* and their names returned to the clerk of the peace, who is to levy the fine. Before this act the names of jurors who did not attend were returned to the judges of assize, by whom they might be fined. The coroner may also punish witnesses who refuse to give evidence, for contempt of court. When the jury are assembled, they are charged and sworn by the coroner to inquire, upon view of the body, how the party came by his death. The act for the registration of deaths (6 & 7 Will. IV. c. 86) provides that at every inquest "the jury shall inquire of the particulars herein required to be registered concerning the death, and the coroner shall inform the registrar of the finding of the jury." One of the particulars herein required to be registered is the "cause of death." The inquiry assumes therefore something of a medico-jurisprudential character, by being directed to the "cause" of death, instead of being chiefly made with a view to ascertain if death were the result of homicide. That was and is important; but there are other points to be settled which are also important, and in which medical and chemical skill can alone determine whether the cause of sudden death has been natural or whether suicide has been committed. Instances have occurred in which death from opium has been mistaken for apoplexy, until a post-mortem examination has taken place. The Life Insurances have a direct interest in ascertaining the precise cause of death, and to the community generally it is of consequence that there should be as little impunity as possible to crime. The coroner has no authority to take an inquisition of death, except upon view of the body by himself and the jury; and if he does so, the inquisition is wholly void. (Rex *v.* Ferrand, 3 Barn. and Ald. *Reports,* 260.) Formerly, it is probable that the whole inquisition was taken in the presence of the body, but it is now sufficient if the coroner and jury together see the body, so far as to ascertain whether there are marks of violence upon it or any appearances which may account for the cause of death. The coroner must sit at the place where the death has happened. If the coroner's inquest finds that any person is guilty of murder or other homicide, it is his duty to commit

them to prison for trial, and he must also inquire what lands, goods, and chattels he may have, which are liable to forfeiture for such murder. He must also inquire whether any deodand has in any case of violent death become due to the king, or the lord of the franchise by the death of the person upon whose body the inquisition is held. If a body liable to an inquest has been buried before the coroner has notice of the circumstances of the death, he has authority to cause it to be disinterred for the purpose of holding the inquest, provided he does so within a reasonable time. The coroner has power to exclude persons from his court. By a recent statute (7 Geo. IV. c. 64, § 4), which repeals an old enactment on this subject, it is provided that "every coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessary to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material; and shall have authority to bind by recognizance all such persons as know or declare anything material touching the said manslaughter or murder, or the said offence of being accessary to murder, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the court in which the trial is to be, before or at the opening of the court." It is also a branch of the coroner's business to inquire into shipwrecks, and certify whether it is a wreck or not, and who has got possession of the goods. He also inquires into treasure trove. By a section of the 7 Geo. IV. c. 64, authority is given to the court to which the inquisition ought to be delivered to examine in a summary manner into any offence committed by the coroner against the act, and to punish him by fine. The coroner's inquisition may be removed into the Court of King's Bench, and the facts found may be traversed by the personal representatives of the deceased; or the court may make it for any apparent defect. By 7 & 8 Vict. the coroner is prohibited from acting professionally in any case in which he shall have sat as coroner.

For every inquisition taken in any place contributing to the county rates, the coroner is entitled to a fee of 20*s.*, and by 1 Vict. c. 68, to an addition of 6*s.* 8*d.*, and also to 9*d.* for every mile which he is obliged to travel from his usual place of abode to any other place, for the purpose of taking it, to be paid by order of sessions out of the county rates. If he holds two or more inquisitions at the same place at the same time, he is only entitled to one 9*d.* for each mile of distance; but this rule is not always very strictly observed in some counties. By 7 & 8 Vict. c. 92, the coroner may be paid travelling expenses, although in the exercise of his discretion he may have deemed it unnecessary to hold an inquest. The sum paid to coroners out of the county rates in 1834 was 15,648*l.* In 1838 and 1839 about 35,000 inquests were held in the two years. The act 1 Vict. c. 68, authorises the justices of the peace in England and Wales, at their quarter-sessions, and the town councils of every borough which has a coroner's court at their quarterly meetings, to make a schedule of the fees, allowances, and disbursements which the coroner is allowed to pay (except the fees payable to medical witnesses, under 6 & 7 Will. IV. c 89), on holding any inquest. This schedule regulates for each county or division of a county the expenses to be paid to the constable for summoning witnesses, &c. There is usually a small sum allowed to each juryman, generally 1*s.* 6*d.* in counties and 1*s.* in boroughs. The following are extracts from the schedule of fees settled by the magistrates of the county of Warwick:—

	At the discretion of the coroner, and not exceeding s.	d.
To the Keeper of any Inn or other public-house for the use of a room for a dead body until the Inquest is held	20	0
To the Keeper of any Inn or other public-house for the use of a room for holding an Inquest . . .	5	0
To a Witness residing in the parish where the Inquest is held, for loss of time in attending to give evidence .	5	0
To a witness who does not reside in the parish, is allowed per mile . .	0	4
To every Witness in the three professions of law, physic, and divinity, for each day	42	0
To each Juryman residing in the parish where an Inquest is held	1	6
To each Juryman not residing in the parish where the Inquest is held . . .	3	0
To any person for taking a dead body out of the water, extinguishing fire in the case of a person burning, or removing a dead body when found to some convenient place till an Inquest can be held, and giving notice to the proper authorities .	7	6
To a Chemist, Engineer, or other scientific person per day	42	0
For interring the body of a *Felo de se*, including horse and cart, and other trouble (exclusive of burial fees, if any)	10	0
For digging the grave for interring the body of a *Felo de se*	3	6
To bearers of the body of a *Felo de se* . . .	10	0
Coffin for a *Felo de se* . .	7	0

By a recent act of parliament, 6 & 7 Will. IV. c. 89, the coroner is empowered to order the attendance of legally qualified medical practitioners upon an inquisition of death, and to direct the performance of a *post mortem* examination; and if the majority of the jury are dissatisfied with the first examination, they may call upon the coroner to summon a second medical witness, to perform a *post mortem* examination, whether it has been performed before or not. The statute also authorizes the coroner to make an order for the payment of a fee of one guinea to such witness, if he has not performed a *post mortem* examination, and of two guineas if he has performed such examination. Medical practitioners are also liable to a penalty of 5*l.* if they neglect to attend. By 1 Vict. c. 68, the fees of medical witnesses are to be paid at once by the coroner, instead of by an order on the churchwardens, as directed by 6 & 7 Wm. IV. c. 89.

The coroner has also occasionally to exercise a ministerial office, where the sheriff is incapable of acting. Thus where an exception is taken to the sheriff on the ground of partiality or interest, the king's writs are directed to the coroner. This incident to the office of coroner points distinctly to their ancient character as ministerial officers of the crown. For his services when acting for the sheriff, he was not allowed any fees before the passing 7 & 8 Vict., but this statute secures to him the same amount of fees as the sheriff would be entitled to.

By the Municipal Reform Act, 5 & 6 Will. IV. c. 76, § 62, the council of every borough, to which a separate court of quarter-sessions has been granted, is empowered to appoint a fit person, not being an alderman or councillor, to be coroner of the borough, who is to hold his office during good behaviour. The fees and general duties of borough coroners are the same as those of county coroners; but the borough coroners are required by the statute to make an annual return to the secretary of state of all inquests of death taken by them. The number of inquests held in the boroughs of Manchester, Birmingham, Liverpool, and Bristol in 1844, and their proportion to the population, was as follows:—

		One in
Manchester .	259	938
Birmingham	263	741
Liverpool .	432	663
Bristol . .	203	690

The average cost of the coroner's court for the borough of Birmingham, averaged 899*l.* for the five years ending 31st of December, 1844; coroner's fees (20*s.*) under 25 Geo. II. c. 29, and 6*s.* 8*d.* under 1 Vict. c. 68, annually averaged 337*l.* 4*s.*; and the expense of 1416 inquests averaged 3*l.* 3*s.* 5¾*d.* each. The disbursements, independent of coroner's fees, averaged 561*l.* 8*s.* 2¾*d.* a year. [DEODAND.] (Hawkins's *Pleas of the Crown*, book ii. cap. 9; Burn's *Justice*, tit. 'Coroner;' and Jervis's *Practical Treatise on the Office and Duties of Coroners.*)

CORPORAL (in the French service *caporal*), a non-commissioned officer in a battalion of infantry. The word is derived from the Italian *capo*, signifying a head; and the title denotes that the person who bore it was the chief of a small squadron or party. During the reigns of Mary and Elizabeth the corporal was a kind of brigade-major; he superintended the marches of the companies, and commanded the troops who were sent out on skirmishing parties. But at present he is immediately under the sergeant; he places and relieves the sentinels, and at drill he has charge of one of the squads. In the ranks he does the same duty as a private soldier, but his pay is rather higher.

Lance-corporal, originally *lance-spesata*, denoting a broken or spent lance, was a term applied to a cavalry soldier who had broken his lance or lost his horse in action, and was subsequently retained as a volunteer in the infantry till he could be remounted. He is now merely a soldier who does the duty of a corporal, but without the pay, previously to obtaining the full appointment to that grade.

CORPORATION. For the purpose of maintaining and perpetuating the uninterrupted enjoyment of certain powers, rights, property, or privileges, it has been found convenient to create a sort of artificial person, or legal person, not liable to the ordinary casualties which affect the transmission of private rights, but capable, by its constitution, of indefinitely continuing its own existence. This artificial person is called an *incorporation*, *corporation*, or *body-corporate*. The last of these names is the most correct, as well as the earliest, that occurs in our law. The former express rather the act of creating the body than the body itself, and do not appear to have been used in their modern sense till the fifteenth century. The institution of such bodies under similar or different names was common among the Romans [COLLEGIUM], and it seems probable that bodies possessing all the essential characteristics of modern corporations were known in the Greek polities.

Corporations may be divided into various kinds, according to the mode in which they are viewed. Viewed with respect to number, they are either corporations sole, which consist of a single person and his successors; or they are composed of many persons, who are legally considered as one, and are called corporations aggregate. Viewed with respect to the distinction between things spiritual and things temporal or civil, all corporations are either ecclesiastical or lay corporations. Lay corporations are subdivided into civil corporations and eleemosynary corporations. Civil corporations are those which have purely a civil object, such as administration, commerce, education, and other like purposes. Eleemosynary corporations may have various objects, but they all agree in this, that they have been endowed for the purposes of distributing the alms or bounty of the founder and other donors. Spiritual corporations are divisible into regular and secular corporations.

The idea of a corporation *sole*, formed by a succession of single persons, occupying a particular office or station, and each in virtue of his character succeeding to the rights and powers of his predecessor, has been said to be peculiar to our law, and to be an improvement upon the original notion of a corporation. (4 Blackstone's *Comment.* 469.) The king, a bishop, a parson, the chamberlain of London, &c. are examples of such corporations sole. It may be observed, how-

ever, with respect to the supposed novelty of the invention, that similar cases of official succession and representation probably occur in almost every system of law, so that the claim of originality must be restricted to the mere name; and even in this respect, we incline to the opinion of Dr. Wooddesson, "that as so little of the law of corporations in general applies to corporations sole, it might have been better to have given them some other denomination." (1 Wooddes. *Vin. Lect.* 471, 2.) The following notice is chiefly confined to the law of corporations aggregate. The legal incidents of such corporations sole, as bishops and parsons, are mentioned under BISHOP and BENEFICE.

The members of cathedral and collegiate chapters are secular ecclesiastical corporations aggregate. Before the reformation the law recognised a class of ecclesiastical corporations *regular*, consisting of abbots or priors and their respective convents, and apparently the societies of friars or mendicant orders. (Brook's *Abr. Corporations*, pl. 12.) The heads of these conventual bodies were often distinct corporations sole, as is still the case in many of the modern secular ecclesiastical establishments.

The colleges in Oxford and Cambridge, and incorporated schools and hospitals, are instances of eleemosynary corporations; being endowed and established for the purpose of perpetuating the bounty of their respective founders. [COLLEGIUM.]

But the largest class of corporations, and those which are most varied in their object and character, are lay and civil incorporations. Among these are the universities of Oxford, Cambridge, Durham, and London, the municipal corporations of different cities and boroughs, the East India Company, the Bank of England, the Colleges of Physicians and of Surgeons, the Royal Society and Academy, the Society of Antiquaries, and numerous commercial and other companies erected by charter or by act of parliament.

A corporation cannot be created by any authority except that of the king or the parliament. Where any such body has existed from time beyond legal memory, it is presumed to have a legitimate origin in one or the other of the above sources. Until the Reformation the pope and the bishop of the diocese were considered necessary parties to the foundation of any new society of monks or *regular* clergy. The refusal of the pope to confirm the foundation of Sion Monastery in the reign of Henry VI. is known to have caused an alteration in the original plan of that establishment. (Cotton's *Abridgment*, 589.) The king creates a corporation by letters-patent: the parliament by act of parliament, that is, by a law. Sometimes a corporation is created by implication from the words of an act of parliament; for instance, if certain persons, such as the conservators of a river, are declared to take lands by succession, they are incorporated: for the word "succession" is opposed to "inheritance," and involves the notion of a corporate body. Custom sometimes establishes a corporation, as in the case of churchwardens, who are a corporation with respect to the goods and chattels of the church, and they may purchase goods for the church, but not land, except by the special custom of the city of London. Those corporations which have existed from time beyond legal memory, and have no charter or warrant to show for their authority, are said to be corporations by prescription.

The principal incidents of a corporation aggregate are the following:—

1. It can purchase, convey, and hold land or goods in perpetual succession, notwithstanding the changes and fluctuations that occur among the members successively appointed to fill the vacancies which happen in it.

2. It can become a party to proceedings at law, or to contracts, by the corporate name given to it on its foundation.

3. The act or assent of the majority is binding on all the rest; such at least is the general rule, wherever the instrument of foundation does not otherwise provide.

4. It signifies its assent, and testifies its corporate acts, by a common seal, without which hardly any contract is binding on the corporate body.

5. It is competent to enact regulations called bylaws, which are binding on the members of the corporation, and, in some cases, on strangers also. [BYLAW.]

6. The particular members of the body

are not in general personally responsible for the acts, contracts, or defaults of the corporation, so long as the acts of the corporation are conformable to the powers which are given to it. This exemption from individual liability makes it very desirable for commercial and other trading companies to obtain charters of incorporation, by which the members escape the risk of ordinary partnerships.

7. The personal defaults or misconduct of the members cannot in general be visited on the corporate body.

The capacity of holding land is restrained by the statutes of mortmain, which make it necessary to obtain an express licence to that effect from the crown or the legislature. [MORTMAIN.]

With regard to the exemption from personal responsibility in respect of corporate acts, the members of the body cannot directly authorize an injury to be done to another under the sanction of a corporate act, without incurring the usual personal consequences. Thus, if a corporation should by an instrument under the common seal direct a trespass to be committed on a third person, every member of the majority who was present, and actually assenting to the act, would be liable in his private capacity.

The mode of filling up vacancies which occur in the constituent members of the corporate body, is determined either by the express provisions of the charter of incorporation, or (in the case of immemorial corporations) by ancient usage. The most common and regular method of maintaining the succession is by election. In the case of corporations sole the successor is appointed by the crown, or by a patron or founder. In the case of ecclesiastical corporations the forms of election are in many instances preserved, but the substantial right of nomination has long been exercised either by the crown or by some authority or person independent of the chapter or other corporate body.

With a view to ensure the performance of those duties, and a strict adherence to those regulations which are imposed upon corporate bodies either by the will of their founders or the general tenor of their charters, there are certain persons and courts, whose office it is to exercise a power of superintendence and correction.

In the instance of eleemosynary bodies, as colleges, schools, and hospitals, the person so appointed is called a *visitor*, and is either the heir of the original founder, or some person specially appointed by him, or (in the absence of either of these) the king. [COLLEGIUM.]

In ecclesiastical corporations, the bishop of the diocese is, of common right, the visitor. His right of visitation formerly also extended over all the monastic establishments within the same district, unless the abbot or other head of the convent had purchased a papal bull of exemption, the effect of which was to subject him to the sole superintendence of the pope himself. With regard to lay corporations, such as municipal corporations, trading companies, and similar bodies, their irregularities are left for correction to the ordinary courts of justice, which have sufficient powers for that purpose. The Court of King's Bench exercises the authority by the writ of mandamus of compelling corporate bodies to do acts which they ought to do and neglect to do.

A corporation may be extinguished in various ways.

1. A corporation aggregate may be extinguished by the natural death of all the members.

2. Where a select body of definite number, constituting an integral part of the corporation, is so reduced by death, or other vacancy, that a majority cannot be present at corporate meetings, the whole body becomes incapable of doing any corporate act, and, according to the better opinion, the corporation is thereby extinguished. This is the result of a rule in corporation law,—that every act must be sanctioned, not only by a majority of the number actually present at a meeting, but also at a meeting composed of a majority of each definite body into which the corporation has been subdivided by the charter. Thus, if a corporation consists of a mayor, twelve aldermen, and an indefinite number of burgesses, at least seven aldermen must be present at every meeting; nor can a legal meeting be convened in the absence of the mayor, except

for the purpose of electing a new one. The tendency of the rule is to compel the elective body to fill up vacancies without delay, and to secure the attendance of a competent number when the public business is transacted. The rule is inapplicable to a body of *indefinite* number, such as the general body of freemen; and it is liable to be modified and controlled by the charter, or other fundamental constitution of the corporation. The rule of the civil law, requiring the actual presence of two-thirds of the corporation at elections, seems to have been dictated by a similar policy; but Sir W. Blackstone (*Commentaries*, vol. i. p. 478) is in error, when he supposes that a bare majority of the body so assembled could not bind the rest. (See Pancirollus, *De Magist. Municip. apud Grævium.*)

3. A dissolution may be effected by a surrender to the crown; at least where the incorporation is by charter, and where all the members concur and are competent to concur.

4. A corporation may be forfeited, where the trust for which it was created is broken, and its institution perverted. Such a forfeiture can only be declared by judgment of the superior courts on process issued in the ordinary course of law, called, from the initial words of the writ, *Quo Warranto*, in which the fact of misuser, if denied, must be submitted to a jury.

5. A corporation may be dissolved or remodelled by act of parliament.

Having already alluded to the religious corporations of monks and other regular clergy formerly existing in this country, we may observe that the validity of the surrenders obtained by the crown at their suppression was deemed sufficiently doubtful to require the confirmation of an express act of parliament. Even then, in the opinion of the canonists, the *spiritual* incorporations still continued until suppressed by competent spiritual authority, and were capable of perpetuation, although their possessions were lost, and their civil rights extinguished. Hence it was that the Brigettine nuns of Sion, suppressed by Henry VIII., restored by Queen Mary, and again ejected by her successor, continued to maintain a migratory existence for two centuries and a half in Holland, Belgium, France, and Portugal, and still claimed to be the same convent which Henry V. had founded on the banks of the Thames. (See letter of the Abbé Mann, 13 *Archæologia.*)

The corporations established for local administration of towns are now generally called municipal corporations. [MUNICIPAL CORPORATIONS.] Bodies incorporated for the purpose of commerce, or the profitable investment of capital, such as railway companies, mining companies, banking companies, belong to the class of JOINT-STOCK COMPANIES, under which head they are treated of. Any number of individuals associated for purpose of traffic, who are not incorporated, form a partnership, and they are individually liable like the partners of any mercantile firm.

CORPORATIONS, MUNICIPAL. [MUNICIPAL CORPORATIONS.]

CORPORATION AND TEST ACTS. [TEST AND CORPORATION ACTS.]

CORRECTION, HOUSES OF. [TRANSPORTATION.]

CORRUPTION OF BLOOD. [ATTAINDER.]

CORTES, the name of the assembly of representatives of the Spanish nation. These assemblies have been variously constituted in different ages, and in the different kingdoms into which Spain was divided till the time of Ferdinand and Isabella. The cortes of Castile and Leon and those of Aragon were the principal. Considerable obscurity prevails as to the origin and the formation of both. The earliest national assemblies under the Visigothic kings met generally at Toledo; they consisted chiefly of the dignitaries of the church, and were called councils. After deciding all questions of church discipline, they deliberated upon temporal affairs, and in this stage of the discussion the lay lords or barons took an active part, and the king presented his requests. In the acts of the council of Leon, A.D. 1020, ch. vi., the transition from ecclesiastical to temporal affairs is clearly pointed out:—"Judicato ergo ecclesiæ judicio, adeptaque justitia, agatur causa regia, deinde populorum." In the acts of the council of Jaca, 1063, we find that several points of discipline

were reformed "with the consent of the nobles and prelates;" and the signatures are those of the king, the infantes, nine bishops, three abbots, and three magnates; but it is added in a note that "all the other magnates had subscribed to the same acts." It is now generally acknowledged, that in that age, and down to the end of the twelfth century, there was no popular representation from the towns or commons of Castile and Leon in those assemblies. (Marina, *Teoria de las Cortes;* Sempere, *Histoire des Cortes;* Dunham, *History of Spain and Portugal.*) The people are said to have occasionally attended these national councils on some solemn occasions, as at the council held at Toledo in 1135, but only as spectators and witnesses, "to see, to hear, and to praise God." By degrees, as the towns rose into importance, and obtained local fueros, or charters, from the kings for their own security, or formed themselves into fraternities for their mutual protection against the Moors or against the violence of their own nobles, some of them obtained at last the privilege of sending deputies to the national councils, which were now styled cortes, because, according to some etymologists, they were held at the place where the king had his court. The cortes held at Salamanca by Ferdinand II., in 1178, consisted only of the nobility and clergy; but at the cortes of Leon, A.D. 1188, we first hear that there were present deputies "of towns chosen by lot;" and in the same year the cortes of Castile assembled at Burgos, where deputies from about fifty towns or villages, the names of which are mentioned, were present. How these places came to obtain this privilege is not known, although it is probable that it was by the king's writ or by charter. The cortes were henceforth composed of three estamentos or states, clergy, lords, and procuradores, or deputies from the enfranchised towns, forming together one chamber, but voting as separate estates. It was a standing rule, that general laws must have in their favour the majority of each estamento. This was the principle of the cortes of the united kingdom of Castile and Leon. The same principle existed in the kingdom of Aragon; only there the cortes were composed of four brazos or estates, namely, the prelates, including the commanders of the military orders, the ricos hombres, or barons, the infanzones, or caballeros, who held their estates of the great barons, and lastly, the universidades, or deputies of the royal towns. These last are first mentioned at the cortes of Monzon, in 1131. The towns and boroughs in Aragon which returned deputies were thirty-one; but the number of deputies returned by each is not stated by the historians, any more than those for the cortes of Castile. We find the same town returning sometimes a greater, sometimes a smaller number, and at other times none at all, and a small town or village sending more deputies than a large one; while many considerable towns never returned any, independently of the seignorial towns, which of course had no representative privilege. How all this was made to agree with the manner of voting, in order to ascertain the opinion of the majority, is not clearly stated. The institutions of the kingdom of Aragon, which have been much extolled by some writers, appear to have been better defined than those of Castile, as the Aragonese, with the exception of the peasant serfs of the nobility, certainly enjoyed a greater share of individual liberty than the rest of the Peninsula.

In Castile, from the end of the thirteenth century, the popular estamento made rapid strides towards increasing its influence, being favoured in this by some kings or pretenders to the crown, such as Sancho IV. and Enrique II., or taking advantage of disputed successions and stormy minorities, to obtain from one of the contending parties an extension of their privileges. In 1295 the deputies of thirty-two towns and boroughs of Castile and Leon assembled at Valladolid, and entered into a confederacy to defend their mutual rights against both the crown and the nobles. Among many other resolutions, one was, that each of the thirty-two constituencies should send two deputies every two years to meet about Pentecost at Leon or some other place, in order to enforce the observance of their agreement. In 1315, during the frightful confusion which attended the minority

of Alonso XI., we find another confederacy between the nobles and the procuradores of 100 communities, with a similar clause as to deputies meeting once or twice every year. These meetings of deputies for special purposes ought not to be confounded with the general cortes of the kingdom, which were always convoked by the king, though at no fixed times. Enrique II., having revolted against his brother Pedro the Cruel, courted the support of the municipal towns, which at the cortes of 1367 demanded the admission de jure of twelve deputies into the royal council, which had till then consisted of hereditary nobles and prelates, with occasionally some civilian called in by the king. Enrique promised to comply with their request; but his brother's death having ensured his seat on the throne, he evaded the fulfilment of his promise by creating an Audiencia Real, or high court of appeal, consisting of prelates and civilians, and a criminal court of eight alcaldes chosen from different provinces of the kingdom. Juan I., who succeeded him, after the loss of the battle of Aljubarrota, created a new council in 1385, consisting of four bishops, four nobles, and four citizens, with extensive executive powers. The towns next solicited the dismissal of the bishops and nobles from the council, in order that it should consist entirely of citizens; but Juan rejected the demand. They also contrived at times to exclude the privileged orders from the cortes. Marina says that the privileged orders themselves, having lost much of their influence, abstained from attending the cortes; yet it is certain that although money might be voted without them, for the simple reason that they were exempt from taxation, the third estate alone paying all direct taxes, yet nothing else of importance could be decided without their concurrence. Although members of the privileged orders should not attend, they might be represented by proxy, as was the case in Aragon. Besides, the cortes were not all of one sort; there were general or solemn cortes, and especial cortes, for some particular purpose. Juan appointed by his testament six prelates and nobles as guardians of his infant son Enrique III., who were not, however, to decide in any important affair without the concurrence of six deputies, one from each of the cities of Burgos, Toledo, Leon, Seville, Cordova, and Murcia. The fourteenth century seems to have been the brightest period of popular or more properly municipal representation in Spain. The cortes were frequent, and the subject of their deliberations of the most important nature. But Spain had never a definite representation; to no meeting of this period did all or half the great towns send deputies; and those which did return them appear to have observed little proportion in the numbers. There can be no doubt that two ought to have been returned from each; yet in the cortes of Madrid, in 1390, we find that Burgos and Salamanca sent eight each, while the more important cities of Seville and Cordova sent only three; Cadiz only two; Oviedo and Badajos one; Santiago, Orense, Mondonedo, and other great cities of Galicia sent none at all. In fact, only forty-eight places returned deputies to these cortes, and the number, at the most, was inconsiderable. Incidentally we learn that in the assemblies of this period the archbishop of Toledo spoke for the ecclesiastical state, and the chief of the house of Lara for the nobles. Some of the deputies contended for the precedence in voting, as well as for that of seats. This rivalry was more conspicuous between Burgos and Toledo, until Alonso XI. found the means of settling it. "The deputies of Toledo," said the king in the midst of the assembly, "will do whatever I order them, and in their name, I say, let those of Burgos speak." The municipal corporations could boast of something more than the honour of returning deputies, an honour to which many of them were perfectly indifferent. Their condition was far superior to that of the seignorial towns, which for the most part groaned under the oppressions of the nobles. (Dunham, *History of Spain and Portugal*, b. iii. sect. 3, ch. ii.)

The remonstrances or petitions of the general cortes to the king generally began as follows:—"The prelates, lords, and caballeros of the kingdoms of Castile and Leon, in the name of the three estates

of the kingdom," &c. Remonstrances from the deputies of the towns began:—"Most high and powerful prince! your very humble vassals, subjects, and servants, the deputies of the towns and boroughs of your kingdoms, who are assembled in your presence by your order," &c. (Cortes of Valladolid, June, 1420.)

In the cortes of 1402, Enrique III. demanded for his wars with the Moors a supply of 60,000,000 maravedis, but the deputies granted only 45,000,000. The king then proposed that if the money should be found insufficient, he might be allowed to raise the deficiency by a loan without convoking the cortes afresh for the purpose. To this the majority of the deputies assented. By his testament Enrique excluded the citizens from the Council of Regency during the minority of his son Juan II., and after this they were no longer admitted into the royal council. Thus the municipal towns lost a great advantage which they had gained thirty years before under Juan I. They soon after sacrificed, of their own accord, their elective franchises. The expenses of the deputies to the cortes had been till then defrayed by the towns, but now having lost their influence at court by their exclusion from the royal council, the towns began to complain of their burthen. Juan II. listened attentively to their complaints, and in the cortes of Ocana, 1422, he proposed that the future expenses of the deputies should be defrayed out of the royal treasury, a proposal which was willingly accepted. Accordingly, in the next cortes, 12 cities only, Burgos, Toledo, Leon, Zamora, Seville, Cordova, Murcia, Jaen, Segovia, Avila, Salamanca, and Cuenca, were summoned to send their deputation; some other towns were informed that they might entrust their powers to any deputy from the above. The privilege was subsequently extended to six more cities; Valladolid, Toro, Soria, Madrid, Guadalaxara, and Granada. These eighteen places constituted henceforth the whole representation of the kingdoms of Castile, Leon, Galicia, and Andalusia. The other communities at last perceiving the advantage they had lost, petitioned to be restored to their right, but found themselves strenuously opposed by the eighteen privileged towns. The influence of the court was openly exercised in the elections of these towns, and although the cortes of Valladolid in 1442, and those of Cordova in 1445, requested the king to abstain from such interference, yet the practice became more barefaced than ever. In 1457 Enrique IV. wrote to the municipal council of Seville, pointing out two individuals fit to be deputies in the next session, and requesting they might be elected. The municipal councils, which elected their own officers as well as the deputies to the cortes, were composed of all the heads of families, but by degrees the crown interfered in the appointment of the municipal officers. [AYUNTAMIENTO.]

Thus long before Charles I. (the emperor Charles V.), who has been generally accused of having destroyed the liberties of Spain, the popular branch of the representation was already reduced to a shadow, for the deputies of the eighteen cities, elected by court influence, were mere registrars of the royal decrees, and ready voters of the supplies demanded of them. Under Ferdinand and Isabella the royal authority became more extended and firmly established by the subjection of the privileged orders; the turbulent nobles were attacked in their castles, which were razed by hundreds, and the Santa Hermandad hunted the proprietors throughout the country. Many of the grants by former kings were revoked, and the proud feudatories were tamed into submissive courtiers.

Charles only finished the work by excluding the privileged orders from the cortes altogether, he and his successors contenting themselves with convoking the deputies of the eighteen royal cities of the crown of Castile on certain solemn occasions, to register their decrees, to acknowledge the prince of Asturias as heir apparent to the throne, to swear allegiance to a new prince. The policy of absolutism has been the same in all countries of Europe: it has used the popular power against the aristocracy, in order to reduce and destroy both in the end.

In Aragon, Valencia, and Catalonia, which formed the dominions of the crown of Aragon, the cortes of each of these

three states continued to assemble under Charles I. and his successors of the Austrian dynasty, who convoked them in their accustomed manner by brazos or orders, and they maintained some show of independence, although in reality much reduced in importance after Philip II. had abolished the office of the Justiza. But after the War of the Succession, Philip V. of Bourbon formally abolished the cortes of these states by right of conquest, as he expressed it, because they had taken part with his rival the Archduke Charles.

In 1808, when the Spanish people rose in every province against the invasion of Napoleon, the king was a prisoner in France, after having been obliged by threats to abdicate the crown, and the nation was without a government. Municipal juntas were formed in every province, consisting of deputies taken from the various orders or classes of society, nobles, clergymen, proprietors, merchants, &c. These juntas sent deputies to form a central junta, with executive powers for the general affairs of the country, but a legislature was still wanting. The central junta was called upon to assemble the cortes for all Spain. They at first thought of reviving the ancient cortes by estamentos or brazos, but many difficulties presented themselves. The difference of formation between the old cortes of Aragon and those of Castile; the difficulty of applying those forms to the American possessions of Spain, which were now, for the first time, admitted to equal rights with the mother country, but where the same elements of society did not exist, at least not in the same proportion; the difficulty even in Spain of collecting a legitimate representation of the various orders, while most of the provinces were occupied or overrun by French armies, and while many of the nobility and the higher clergy had acknowledged the intrusive king Joseph Napoleon; all these, added to the altered state of public opinion, the long discontinuance of the old cortes by orders or estates, the diminished influence of the old nobility, and the creation of a new nobility during the latter reigns merely through court favour, made the original plan appear impracticable. The situation of the country was in fact without a parallel in history. The central junta consulted the consejo (reunido) or commission of magistrates, from the old higher courts of the kingdom, who proposed to assemble deputies of the various brazos or estamentos, all to form one house, a proposal extremely vague and apparently impracticable, which looks as if made to elude the question. Jovellanos and others then proposed two houses, constituted as in England; but this would also have been a new creation without precedent in Spain, and surrounded by many difficulties, the state of society being greatly different in the two countries. Meantime the central junta being driven away by the French, first from Madrid, and afterwards from Seville, in January, 1810, took refuge at Cadiz, which became the capital of the Spanish patriots, whither a number of persons from the various provinces and classes had flocked. Before leaving Seville, the central junta issued regulations addressed to the provincial juntas about the manner of electing the deputies to the cortes, stating at the end that "similar letters of convocation would be addressed to the representatives of the ecclesiastical brazo and of the nobility." This, however, was never done.

The central junta soon after arriving at Cadiz resigned its power into the hands of a council of regency composed of five individuals, but before its resignation it issued a decree approving of the plan of Jovellanos for two chambers, and recommending it to the regency. The regency however paid little attention to this recommendation; it seemed to hesitate during several months about convoking any cortes at all, for there was at Cadiz a party of pure absolutists opposed to any representation whatever. The regency again consulted the consejo reunido, the majority of which, departing from its former opinion, gave up the idea of cortes by estamentos, and proposed the election of deputies without distinction of classes. The council of state being likewise consulted by the regency, decided that, owing to the actual state of affairs, it was best to elect the deputies without esta-

mentos, reserving to the "representatives of the nation once assembled to decide whether the cortes should be divided by brazos or into two chambers, after listening to the claims of the nobility and clergy." The regency at length issued letters of convocation for the deputies of all the provinces to assemble in cortes at the Isla de Leon on the 24th September, 1810. The elections for those provinces which were entirely occupied by the French were made at Cadiz by electoral juntas, composed of individuals of those provinces who had taken refuge there. A similar process was adopted with regard to the American provinces. (Arguelles, *Examen historico de la Reforma Constitucional;* Jovellanos, *Memoria a sus Compatriotas*, with *appendix* and *notes* to the same.)

The cortes, styled "extraordinary," sat at Cadiz from September, 1810, till September, 1813. During this time, amidst numerous enactments which they passed, they framed a totally new constitution for Spain, which has become known by the name of "the Constitution of 1812," the year in which it was proclaimed. This constitution established the representative system with a single popular chamber, elected in a numerical proportion of one deputy for every 70,000 individuals. The elections were not direct, but by means of electoral juntas or colleges, as in France: assembled citizens of every parish appointed, by open written votes, a certain number of delegates, who chose, by conference among themselves, one or more parish electors, in proportion to the population. All the parish electors, of every district, assembled together at the head town or village of the same, and there proceeded to elect by ballot the electors for the district. All the district electors of one province formed the electoral junta which assembled in the chief town of that province to appoint the deputies to the cortes, either from among themselves or from among the citizens who were not district electors, provided they were Spanish citizens born, in the full exercise of their civil rights, were more than 25 years of age, and had had their domicile in the province for at least seven years past. By Art. 92, a qualification was inserted of a yearly income, the amount and nature of which were left to the discretion of future cortes to determine. Every district elector, in succession, stepped up to the table where the president and secretary were, and told the name of his candidate, which the secretary wrote down. The scrutiny then took place, and the majority of votes decided the election. The deputies elected received full powers, in writing, from their electors, "to act as they think best for the general welfare, within the limits prescribed by the constitution, and without derogating from any of its articles." They were allowed by the respective provinces a fixed emolument during the time of the sessions. The ordinary cortes assembled once every year, in the month of March, and the session lasted three or, at the utmost, four months. The deputies were renewed every two years.

These were the principles of the formation of the cortes of Cadiz of 1812, which, whatever might have been their merits, had evidently little in common, except the name, with the old cortes of Castile or Aragon. The king had a veto for two years following; but if the resolution were persisted in the third year, his veto ceased.

The extraordinary cortes of Cadiz were succeeded in October, 1813, by the ordinary cortes, elected according to the principle of the Constitution. In January, 1814, they transferred their sittings to Madrid, which had been freed from the French. In March, of that year, King Ferdinand returned to Spain, and soon after dissolved the cortes, abrogated the Constitution, and punished its supporters. In 1820 the Constitution was proclaimed again through a military insurrection; the king accepted it, and the cortes assembled again. The king and the cortes, however, did not remain long in harmony. In 1823 a French army, under the Duke of Angoulême, entered Spain; the cortes left Madrid, taking the king with them to Seville, and thence transferred him by force to Cadiz. Cadiz having surrendered to the French, the cortes were again dispersed, the Constitution was again abolished, and the liberals were again punished. This name of "liberal," which

has become of such general use in our days, originated in the first cortes of Cadiz, where it was used to designate those deputies who were favourable to reform, whilst the opposite party were styled "serviles." (Arguelles, end of chap. v.)

The history of the first cortes of Cadiz has been eloquently written by Arguelles; that of the cortes of 1820-23 and of the subsequent royalist reaction is found in numerous works and pamphlets of contemporary history, written with more or less party spirit, among which the least partial is perhaps the *Révolution d'Espagne, Examen Critique*, 8vo., Paris, 1836: it professes to be written by a Spanish emigrant, who, though no great admirer of the Constitution of 1812, speaks with equal freedom of the guilt and blunders of the violent men of both parties.

Ferdinand VII., before his death, in 1833, assembled the deputies of the royal towns, according to the ancient form, not to deliberate, but to acknowledge as his successor his infant daughter Isabella.

On the 10th of April, 1834, the queen regent proclaimed a charter for the Spanish nation, which was called Estatuto Real. It established the convocation of the cortes and its division into two houses, the procuradores, or deputies from the provinces, and the proceres, or upper house, consisting of certain nobles, prelates, and also of citizens distinguished by their merit. The power of the cortes, however, was very limited, the initiative of all laws being reserved to the crown. This charter was in force only to the 14th August, 1836. In the summer of 1836 insurrections broke out at Malaga and other places, where the Constitution of 1812 was again proclaimed; and at last the insurrection spread among the troops which were doing duty at the queen's residence at La Granja, in consequence of which the queen accepted the Constitution, "subject to the revision of the cortes." The cortes were therefore convoked according to the plan of 1812. Early in 1837 they commenced their duties, and finally approved of and decreed a Constitution, which was proclaimed in Madrid on the 16th of June, 1837. This Constitution has since been arbitrarily suspended.

The following were some of the leading provisions of the Constitution of 1837, so far as they related to the powers of the cortes:—The power of enacting the laws is possessed by the cortes in conjunction with the king, who sanctions and promulgates the laws. The cortes is composed of two co-legislative bodies, equal in powers, the Senate and Congress of Deputies. Of the Senate: The number of senators shall be equal to three-fifths of the total number of deputies. They are appointed by the king, from a triple list, proposed by the electors of each province who elect the deputies. To each province belongs the right of proposing a number of senators, proportionable to its population; but each is to return one senator at least. To be a senator, it is necessary to be a Spaniard; to be forty years of age, and to be possessed of the income and other qualifications defined in the electoral law. All Spaniards possessed of these qualifications may be proposed for the office of senator in any of the provinces. The sons of the king and of the immediate heir to the throne are senators of right at the age of twenty-five years. Of the Congress of Deputies: Each province shall appoint one deputy, at least, for every 50,000 souls of the population. The deputies are elected by the direct method, and may be re-elected indefinitely. To be a deputy it is necessary to be a Spaniard, in the secular state, to have completed the twenty-fifth year, and to possess all the qualifications prescribed by the electoral law. Every Spaniard possessing these qualifications, may be named a deputy for any of the provinces. The deputies shall be appointed for three years. The Cortes are to assemble each year. It is the right of the king to convoke them, to suspend and close their meetings, and dissolve the Cortes; but under the obligation, in the case of dissolution, of convoking and reassembling another Cortes within three months. If the king should omit to convoke the Cortes on the 1st of December in any one year, the Cortes are notwithstanding to assemble precisely on that day; and in case of the conclusion of the

term of the congress holding office happening to occur in that year, a general election for the nomination of deputies is to commence on the first Sunday of the month of October. On the demise of the crown, or on the king being incapacitated to govern, through any cause, the extraordinary cortes are immediately to assemble. . . . . The sessions of the senate and of the congress shall be public, and only in cases requiring reserve can private sitting be held. The king and each of the co-legislative bodies possess the right of originating laws. Laws relating to taxes and public credit shall be presented first to the congress of deputies; and if altered in the senate contrary to the form in which they have been approved by the congress, they are to receive the royal sanction in the form definitely decided on by the deputies. The resolutions of each of the legislative bodies are to be determined by an absolute plurality of votes; but in the enactment of the laws, the presence of more than half the number of each of these bodies is necessary. If one of the co-legislative bodies should reject any project of law submitted to them, or if the king should refuse it his sanction, such project of law is not to be submitted anew in that congress. Besides the legislative powers which the cortes exercise in conjunction with the king, the following faculties belong to them:—1st, To receive from the king, the immediate successor to the throne, from the regency or regent of the empire, the oath to observe the constitution and the laws. 2ndly, To resolve any doubt that may arise of fact or of right with respect to the order of succession to the crown. 3rdly, To elect the regent, or appoint the regency, of the empire, and to name the tutor of the sovereign while a minor, when the constitution deems it necessary. 4thly, To render effective the responsibility of the ministers of the crown, who are to be impeached by the deputies, and judged by the senators. The senators and deputies are irresponsible and inviolable for opinions expressed and votes given by them in the discharge of their duties. Deputies and senators who receive from the government, or the royal family any pension, or employment which may not be an instance of promotion from a lower to a higher office of the same kind, commission with salary, honours, or titles, are subject to re-election.

On the 27th of December, 1843, the cortes were suddenly suspended by an arbitrary decree of the ministers. It was rumoured that the cabinet would promulgate certain laws by edict, after which the cortes were again to be assembled to pass a bill of indemnity for this act of usurpation; and that if the cortes did not pass such bill, they would be dissolved. On the 10th of July, 1844, a decree was published in the Madrid Gazette dissolving the cortes and summoning a new cortes for the 10th of October. They were opened at the appointed time by the queen in person, who on that day completed her fourteenth year, and in the speech from the throne some measures of constitutional reform were recommended to their consideration. On the 18th of October a bill for remodelling the constitution was presented to the congress. This bill proposed to suppress the preamble to the constitution of 1837, which asserted the national supremacy. The members of the senate were to be absolutely appointed by the crown for life. The article requiring the cortes to assemble every year was altered, and it was proposed that they should be convoked by the crown only when it thought fit. These important changes in the constitutional law of the state amounted in fact to a revolution. It was moreover proposed by this bill that political offences, including those of the press, were not to be submitted to the jury.

On the 11th of March, 1845, a new electoral law was brought forward in the cortes by the ministry. The qualification of deputies is to be the possession of 12,000 reals (120*l.*) per annum, from real property, or the payment of 1000 reals (10*l.*) in direct taxes. The qualification for electors is to consist in the payment of 400 reals (4*l.*) per annum, in direct taxes; but members of the learned professions, retired officers in the army and navy, and persons in the employment of government or in active service, who have a salary of 15,000 reals (150*l.*) and up-

wards, are qualified if they pay 200 reals (2*l.*) a year direct taxes. When the number of electors in a district does not amount to one hundred and fifty, that number is to be made up by adding the highest tax-payers. Both deputies and electors must be twenty-five years of age. The number of persons who pay 400 reals direct taxes is said to be very small in many parts of Spain, and the admission to the electoral franchise of persons in the employment of government with a salary of 150*l.* a year is calculated to neutralize the independent opinions of the country, and may sometimes have the effect of keeping in power a government adverse to the general interests. By this electoral law the country is to be divided into 306 electoral districts, each to contain about 40,000 inhabitants, and each district will return one member. This is considered an improvement upon the plan of returning the deputies by provinces.

The history of the cortes of Portugal is nearly the same as that of those of Spain, only that the towns which sent deputies were comparatively fewer, seldom more than ten or twelve at a time, and the influence of the privileged orders greater in proportion. The nobles having by degrees become courtiers, as in Spain, the kings reigned in fact absolute. In latter times there were less remains of popular freedom observable in Portugal than in Spain. In 1820, while King João VI. was in Brazil, a military insurrection broke out in Portugal, and a Constitution was framed in imitation of the Spanish one of 1812, but it was soon after upset. For an account of these transactions see Kinsey's *Portugal Illustrated*, 1828. After the death of King João, his son, Don Pedro, gave a charter to Portugal, establishing a system of popular representation, with two houses; this charter was afterwards abolished by Don Miguel, and again re-established by Don Pedro; but some changes have subsequently been made in it.

The Aragonese, during their period of splendour, extended their representative system by brazos or estamentos to the island of Sardinia, then subject to the crown of Aragon, and the institution, although on a contracted basis, remains to this day in Sardinia under the name of Stamenti, or Estates.

COTTAGE SYSTEM. [ALLOTMENTS.]

COTTON CULTIVATION AND TRADE. Cotton is called, in French, *Coton;* German, *Baumwolle;* Dutch, *Katoen, Boomwol;* Danish, *Bomuld;* Swedish, *Bomull;* Italian, *Cotone Bambagia;* Spanish, *Algodon;* Portuguese, *Algodao;* Russian, *Chlobtschataja Bumaga;* Polish, *Bawelna;* Hindustani, *Rŭhi;* Malay, *Kapas;* Latin, *Gossypium.*

The distinctive names by which cotton is known in commerce are, with the following two exceptions, derived from the countries of their production. The finest kind, which commands the highest price, is called sea-island cotton, from the circumstance of its having been first cultivated in the United States of North America, in the low sandy islands on the coast, from Charlestown to Savannah. It is said that its quality is gradually deteriorated in proportion as the plants are removed from "the salutary action of the ocean's spray." The seed is supposed to have come originally from Persia. It was taken from the island of Anguilla to the Bahamas for cultivation, and was first sent thence to Georgia in 1786. The annual average crop does not exceed 11,000,000 pounds. Upland or Bowed Georgia cotton, the green-seed kind, has received its name of *upland* to distinguish it from the produce of the islands and low districts near the shores. The expression bowed was given as being descriptive of the means employed for loosening the seed from the filaments, which was accomplished by bringing a set of strings, attached to a bow, in contact with a heap of uncleaned cotton, and then striking the strings so as to cause violent vibrations, and thus open the locks of cotton and cause the seeds to be easily separable from the filaments.

A few years ago Mr. Woodbury, secretary of the United States' Treasury, prepared some tables which showed the cultivation, manufacture, and trade in cotton throughout the world. According to these tables, which must be considered as rough estimates, though probably not far from

the truth, the progress of production in the United States was as follows from 1791 to 1831:—

	lbs.		lbs.
1791	2,000,000	1821	180,000,000
1801	48,000,000	1831	385,000,000
1811	80,000,000		

From the season 1832-33 to the season 1843-44 the growth of cotton estimated in bales was as under:—

	Bales.		Bales.
1832-33	1,070,438	1838-39	1,360,532
1833-34	1,205,394	1839-40	2,177,835
1834-35	1,254,328	1840-41	1,634,945
1835-36	1,360,725	1841-42	1,683,574
1836-37	1,422,930	1842-43	2,379,000
1837-38	1,801,497	1843-44	2,030,000

In the ten years preceding 1845 the average annual rate of increase in the growth of cotton in the United States has been about 100,000 bales. The distribution of the cotton crops of the United States was as follows in 1843 and 1844:

	1843. Bales.	1844. Bales.
Great Britain . .	1,470,000	1,203,000
France	346,000	283,000
Other parts of Europe	194,000	144,000
American consumption	326,000	346,744

The progressive average annual increase in the consumption of American cotton in the ten years from 1835 to 1845 has been about 43,609 bales in Great Britain; 12,448 in the United States of North America; and 27,187 on the Continent of Europe and all other places. In the same period the consumption of cotton from all other countries, except North America, has increased at an annual average rate of 14,107 bales.

The cotton wool imported into Great Britain from Brazil, India, Egypt, &c. in 1843 and 1844 was as under:—

	1843. Bales.	1844. Bales.
Brazil	98,821	112,031
Demerara and Berbice	114	234
Egypt	47,638	66,563
East Indies	181,993	237,559
West Indies, Carthagena, &c.	19,093	17,373

It appears from Mr. Woodbury's tables that in 1834 rather more than two-thirds (68 per cent.) of all the cotton sent away from all the places of production were shipped to England. About five-sixths of all the cotton brought into the United Kingdom is of the growth of the United States of North America. Above one-half in value of the exports of the United States consists of cotton wool—47,090,000 out of a total of 92,000,000 dollars in the year ending 30th September, 1842, and 49,000,000 out of a total of 77,000,000 dollars in the nine months ending June 30th, 1843.

During the period in which the increased production has been going forward with the greatest rapidity in America, the prices have been continually declining. In the table of prices given by Mr. Woodbury as those of the United States, at the places of exportation, and including all kinds of cotton, it is shown that the average price of each period of five years, from 1791 to 1835, has been as follows, viz.:—

	per lb.		per lb.
1791 to 1795.	15⅝d.	1816 to 1820.	13d.
1796 to 1800.	18⅓d.	1821 to 1825.	8d.
1801 to 1805.	12½d.	1826 to 1830.	5d.
1806 to 1810.	9½d.	1831 to 1835.	6d.
1811 to 1815.	7½d.		

Mr. Woodbury states that "where rich lands and labour were low, as in Mississippi and Alabama a few years ago, two cents (one penny) per pound for cotton in the seed, or eight cents when cleaned, would pay expenses. It is supposed to be a profitable crop in the South-western States at ten cents per pound." Mr. Bates, of the house of Baring and Co., stated before a Parliamentary Committee, in 1833, that "even six cents, or threepence per pound, is a price at which the planters can gain money in the valley of the Mississippi."

Land fresh brought under cultivation in the United States will yield on an average from 1000 to 1200 pounds per acre of cotton with the seed, which will yield of clean cotton from 250 to 300 pounds.

Bengal cotton of inferior quality can, it is said, be raised for three half-pence per pound, and delivered in England at

an advance of one penny upon that price. Good Surat cotton is said to cost twopence half-penny per pound, delivered at Bombay. The cost of production in our West India colonies is considerably greater, and the cultivation of cotton has consequently been for the most part abandoned by the British planters.

The relative value of the kinds of cotton most commonly introduced for sale and use in this country, will be seen in the following list of average prices per lb. for the years 1843 and 1844:—

	1843.			1844.		
	d.		d.	d.		d.
Sea Island	10½	to	21	10	to	22
Bowed	4½	to	6	3¼	to	5
Orleans, &c.	4 5/8	to	7½	3⅛	to	6
Pernambuco	5 5/8	to	6¾	5	to	6¼
Bahia	5½	to	6½	4⅞	to	5¾
Maranham	4¾	to	6¼	4	to	5¾
Egyptian	6	to	8¼	5	to	8½
Surat	3¼	to	4½	2¼	to	4

The growth of the cotton trade has been rapid beyond all commercial precedent. In 1786 the total imports were somewhat less than 20,000,000 pounds, no part of which was furnished by North America. Our West India colonies supplied nearly one-third, about an equal quantity was brought from foreign colonies in the same quarter, 2,000,000 pounds came from Brazil, and 5,000,000 pounds from the Levant. In 1790 the importations amounted to 31,447,605 pounds, none of which was supplied by the United States. In 1795 the quantity was only 26,401,340 pounds. In this year a commercial treaty was made between the United States of North America and Great Britain, by one article of which, as it originally stood, the export was prohibited from the United States in American vessels of such articles as they had previously imported from the West Indies. Among these articles cotton was included, Mr. Jay, the American negotiator, not being aware that cotton was then becoming an article of export from the United States. In 1800 the imports had more than doubled, having reached 56,010,732 pounds. This was the first year in which any considerable quantity was obtained from America; the imports from that quarter were about 16,000,000 pounds. The progress of this trade during the present century is shown by the following table, exhibiting the imports at intervals of five years:—

	From all places. lbs.	From the United States. lbs.
1805	59,682,406	32,500,000
1810	132,488,935	36,000,000
1815	99,306,343	45,666,000
1820	151,672,655	89,999,174
1825	228,605,291	139,908,699
1830	263,961,452	210,885,358
1835	363,702,693	284,455,812
1840	592,488,010	487,856,504
1842	673,193,136	574,738,520
1844	646,874,816	. . .

The quantities actually employed in our manufactories in different years during the same period have been as under:—

	lbs.		lbs.
1800,	51,594,122	1837,	368,445,035
1805,	58,878,163	1838,	455,036,755
1810,	123,701,826	1839,	352,000,277
1815,	92,525,951	1840,	528,142,743
1820,	152,829,633	1841,	437,093,631
1825,	202,546,869	1842,	473,976,400
1830,	269,616,640	1843,	585,922,624
1835,	326,407,692	1844,	558,015,248
1836,	363,684,232		

The average deliveries of cotton per week, for home consumption, from the ports of Great Britain, distinguishing the deliveries at Liverpool, have been as follows since 1835:—

	Liverpool. Bales.	Total Great Britain. Bales.
1835	16,806	18,127
1836	18,495	19,851
1837	19,271	20,785
1838	22,934	24,320
1839	18,888	19,935
1840	23,037	24,837
1841	20,041	22,133
1842	22,142	23,749
1843	24,738	27,004
1844	25,213	27,255

The rapid increase in the consumption of cotton has altogether resulted from the inventions of Hargreaves, Arkwright, Crompton, and others, in

spinning machinery, and more recently from the invention by Dr. Cartwright, since perfected by other mechanicians, of the power-loom. But for these inventions it would have been impossible for our artisans to have competed successfully with the spinners and weavers of India, from which country we previously received our supply of muslins and calicoes. Not only have we ceased to import for use the muslins of India, but have for many years sent great and continually increasing shipments of those goods to clothe the natives of India. In 1814 our looms supplied 818,202 yards of cotton goods to India. Two years afterwards the shipments were doubled. In 1818 they amounted to 9,000,000 yards; in 1835 the markets of India and China took from us 62,994,489 yards, the declared value of which amounted to 1,660,806*l.*, exclusive of 8,233,142 lbs. of cotton yarn, valued at 603,211*l.* In 1842 we exported to India and Ceylon 155,506,914 yards, of the declared value of 2,480,031*l.*, besides 12,050,839 lbs. of cotton yarn, valued at 545,075*l.* Considerable shipments of cotton piece goods are still made from India to this country, but nearly the whole are re-exported.

The duty on cotton wool was wisely abandoned in 1845, although it amounted to only 5-16ths of 1*d.* per lb. This apparently small duty constituted a tax of 10 per cent. on the New Orleans price of middling cotton most extensively used in this country. It placed the English cotton spinner on very unequal terms with the cotton manufacturers of the United States, who were already in possession of advantages arising from contiguity to the cotton-market, saving in freight, and other diminished charges, which were estimated at 14 per cent., making a total difference of 24 per cent. In 1844 the cotton-spinners of the United States of America were larger consumers of the raw material than the spinners of Great Britain in 1815. The duty pressed most heavily on the coarsest kind of manufactures. Comparing it with the wages of the spinners, the duty of 5-16ths of 1*d.* was 50 per cent. upon the wages of the operatives employed in producing the coarsest heavy yarns; on yarn for domestic goods 30 to 45 per cent.; on yarns spun for printed calicoes 25 per cent.; on yarn for ordinary muslin 10 per cent.; while on the finest lace-yarns the fraction of duty upon the wages of labour was almost inappreciable. On No. 100 twist the pressure of the tax was 2¾ per cent. on the material, and 1¼ on the cost of twist; on No. 12, the coarsest kind, the tax was 12 per cent. on the material and 7¼ per cent. on the cost of twist. On a coarse cotton shirt or stout piece of calico, the duty, small as it might really be, was 200 times greater than on fine muslins. In 1843 the gross duty on cotton-wool amounted to 736,546*l.*, and in 1844 to 672,614*l.* (Messrs. Blackburn and Co.'s *Annual Statistics of the Cotton Trade*, 1844.)

COTTON MANUFACTURE AND TRADE. The use of cotton as a material for the production of woven fabrics was known in India and China for many centuries before its introduction into Europe. The earliest mention of cotton by the Greek writers is by Herodotus (iii. 106) in his brief notice of the usages of the Indi: he calls it (iii. 47) by the significant name of tree-wool (ἔριον ἀπὸ ξύλου), apparently not being acquainted with the native name. In the reign of Amasis, B.C. 563—525, cotton was known in Egypt, but it must have been imported, as there is no reason for supposing it was then grown in Egypt. Cotton cloths were, according to Arrian, among the articles which the Romans received from India, and there is no doubt the manufacture had been carried on in many parts of Asia, long before any extant notice of that quarter of the world being visited by Europeans. The perfection to which the weaving of cotton had then been brought by the natives of many parts of India, notwithstanding their rude and imperfect implements, attests at once their patience and ingenuity. In China, this manufacture is supposed not to have existed at all before the beginning of the sixth century of the Christian æra. The cotton plant was indeed known in that country at a much earlier period, but continued till then to be cultivated only as a garden shrub, and was not indeed propagated on a large scale until the eleventh century;

at the present time nearly all the inhabitants of that populous empire are clothed in cotton cloths of home manufacture.

Before the discovery of the passage to India by the Cape of Good Hope, cotton wool is said to have been spun and woven in some of the Italian states, the traders of which were the channels through which the cotton fabrics of India were distributed to the different countries of Europe. Becoming thus acquainted with these goods, and having near at hand the raw material of which they were formed, it was natural that they should apply to the production of similar goods the manufacturing skill they had long possessed.

Mr. Baines has shown ('Hist. of Cotton Manufacture,') that the cotton plant was extensively cultivated, and its produce manufactured, by the Mohammedan possessors of Spain in the tenth century. This branch of industry flourished long in that country. In the thirteenth century, the cotton manufacturers formed one of the incorporated companies of Barcelona, in which city two streets received names which point them out as the quarter in which the manufacturers resided. The cloths made were mostly of coarse texture, and a considerable quantity was used as sailcloth. The name *fustians*, from the Spanish word *fuste*, signifying "substance," was borrowed from the Spanish weavers, and is still used to denote a strong fabric made of cotton. In consequence of religious prejudice, the arts which long flourished among the Mohammedan possessors of Spain did not extend themselves to the Christian inhabitants of other European countries: the traffic of Andalusia was all carried on with Africa and the East.

From Italy the art made its way to the Netherlands, and about the end of the sixteenth or the beginning of the seventeenth century was brought thence to England by protestant refugees. Lewis Roberts, in 'The Treasure of Traffic,' published in 1641, makes the earliest mention extant of the manufacture in England. He says, "The town of Manchester buys cotton wool from London that comes from Cyprus and Smyrna, and works the same into fustians, vermillians, and dimities."

There is abundant evidence to show that in the beginning of the sixteenth century, and probably before that time, cotton was cultivated and converted into clothing in most of the countries occupying the southern shores of the Mediterranean. The European conquerors of Mexico in their first invasion of that country found in use native manufactures of cotton, both unmixed and mixed with the fine hair of rabbits and hares. Some of these fabrics were sent by Cortes to Spain as presents to the Emperor Charles V. Cotton was cultivated and manufactured at an equally early period by different nations on the coast of Guinea, and it is stated by Macpherson in his 'Annals of Commerce,' that cotton cloths were imported into London in 1590 from the Bight of Benin.

Previous to the introduction of Arkwright's inventions the cotton manufacture was of small importance, as is evident from the quantities of the raw material then brought into the country. Arkwright's first patent for the mode of spinning by rollers was taken out in 1769, and the following account of the importations of cotton at different periods preceding and speedily following that event will show how rapid was the progress occasioned by it, and by the other inventions for which it prepared the way:—

1697 . . .	1,976,359 lbs.	
1701 to 1705 .	1,170,881 „	average
1710 . . .	715,008 „	
1720 . . .	1,972,805 „	
1730 . . .	1,545,472 „	
1741 . . .	1,645,031 „	
1751 . . .	2,976,610 „	
1764 . . .	3,870,392 „	
1771 to 1775 .	4,764,589	average
1776 to 1780 .	6,766,613	
1790 . . .	31,447,605 „	
1800 . . .	56,010,732 „	

The system under which this manufacture was long carried on was very different from that which is now pursued. It was the custom for the weavers who were dispersed in cottages throughout the district to purchase the material with which they worked, and having con-

verted it into cloths to carry their wares to market and sell them on their own account to the dealers: but about 1760, the merchants of Manchester began to employ the weavers, furnishing them with yarn for warp, and with raw cotton, which was spun by the weaver's family for the weft, and paying a fixed price for the labour bestowed in weaving.

The application of machinery to the preparation and spinning of raw cotton for weft preceded by some years the inventions of Arkwright. In the year 1760, or soon after, a carding engine not very different from that now used was contrived by James Hargreaves, an illiterate weaver, residing near Church in Lancashire; and in 1767 the *spinning-jenny* was invented by the same person. This machine as at first formed contained eight spindles, which were made to revolve by means of bands from a horizontal wheel. Subsequent improvements increased the power of the spinning-jenny to eighty spindles, when the saving of labour which it thus occasioned produced considerable alarm among those persons who had employed the old mode of spinning, and a party of them broke into Hargreaves' house and destroyed his machine. The great advantage of the invention was so apparent, however, that it was soon again brought into use, and nearly superseded the employment of the old spinning-wheel, when a second rising took place of the persons whose labour was thus superseded by it. They went through the country destroying wherever they could find them both carding and spinning machines, by which means the manufacture was for a time driven away from Lancashire to Nottingham.

The cotton-yarn produced both by the common spinning-wheel and spinning-jenny could not be made sufficiently strong to be used as warp, for which purpose linen-yarn was employed. It was not until Arkwright's spinning-frame was brought into successful operation that this disadvantage was overcome. Yarn spun with Hargreaves' jenny continued for some time to be used for weft. At first, the manufacturers of cloths composed of cotton only were subject to much annoyance from the determination of the revenue officers to charge them with double the duty paid upon calicoes woven with linen warp and printed for exportation; and also by prohibiting their use at home. With some difficulty an act of parliament was obtained for removing these obstacles to the development of the manufacture, which from that time was prosecuted with a great and continually accelerated rate of increase.

The earliest attempts at producing muslins were made about the year 1780, but without much success, although India-spun yarn was substituted as weft for that produced by the spinning-jenny: the greatest degree of fineness to which yarn spun with Arkwright's frame had then been brought, was eighty hanks to the pound, and even this degree was not attainable by means of the jenny. This disadvantage was overcome by the invention of Mr. Samuel Crompton, which came into general use about the year 1786, and which partaking of the nature of both Hargreaves' and Arkwright's machines, was aptly called the *mule-jenny*. By means of this piece of mechanism, yarns were produced of a much greater fineness than had before been attained. Mr. Crompton's invention was made several years before it could be openly used, because of its interference with the patented invention of Arkwright: but when this patent was annulled, the mule-jenny was brought rapidly and extensively into use, so that in 1787, 500,000 pieces of muslin were made at Bolton, Glasgow, and Paisley, with yarn of British production. The price paid at that time by the manufacturers for these fine yarns was 20 guineas per lb; but such have been the improvements since made in the machine and the manner of working it, that yarn of the same fineness has been sold at 14 shillings per lb. Mr. Crompton did not secure to himself the benefit of his invention by taking out a patent; he carried on a spinning and weaving business on a small scale at Bolton, and worked his mule-jenny with his own hands in an attic. In a brief memoir of Crompton, Mr. Kennedy has stated, that about 1802 he, in conjunction with Mr. Lee, set on foot a subscription which

amounted to 500*l.*, and with this Crompton was enabled to increase his manufacturing establishment, and to set up several looms for fancy work at Bolton. In 1812 he made a survey of all the cotton-manufacturing districts in the kingdom, and ascertained that the number of spindles then at work upon his principle amounted to between four and five millions: since that time the number has been doubled. The kind friends already named assisted him in making an application to parliament for some reward, and the great merit of his invention having been established before a Committee of the House of Commons, he received a grant of 5000*l.*, which was paid to him in full without any deduction for fees or charges. This money was employed by Crompton in putting his sons into business, but they proved unsuccessful, and he was reduced to poverty, when Mr. Kennedy again interfered in his behalf, and raised a second subscription, with the produce of which a life annuity of 63*l.* was purchased. He lived only two years to enjoy this small provision. The first mule-jennies consisted of not more than thirty spindles each, but the number has been progressively increased, and they now frequently contain more than 600 spindles each. With one of these machines, a good workman can produce in a week consisting of sixty-nine working hours, thirty-two pounds of yarn of the fineness of 200 hanks to the pound, and as each hank measures 840 yards, the produce of his week's work if extended in a line would measure 3050 miles. This work, extraordinary as it may seem, does not afford a full conception of the degree of tenuity to which cotton is capable of being reduced, one pound of raw cotton having been converted into 350 hanks, forming a continuous thread 167 miles in length. Mules have been put to work which carry each 1100 spindles. The greatest recent improvement made in the construction of this machine has been effected by Messrs. Sharp, Roberts, and Co., machinists, of Manchester. These machines, which are called self-acting mules, do not require the manual aid of a spinner, the only attendance necessary being that of children, called piecers, who join such threads as may be accidently broken. Self-acting mules were contrived at different times by Mr. William Strutt of Derby, Mr. Kelly of Lanark, Mr. De Jongh of Warrington, and others; but none of these were brought successfully into use, owing no doubt in some measure to the inferior skill of the machine-makers as compared with the perfection which they have since attained.

The first successful attempt to weave by means of machinery was made in 1785 by Dr. Cartwright, who secured the invention by patent. In a commercial point of view Dr. Cartwright did not draw any advantage from his power-loom: but in 1809 he obtained from parliament a grant of 10,000*l.* as a reward for his ingenuity. Mr. Monteith, of Pollokshaws, Glasgow, who fitted up 200 power-looms in 1801, was the first person who brought them to profitable use. A great obstacle to their success was presented by the necessity for the frequent stopping of the machine in order to dress the warp. This difficulty was removed in 1804 by the invention of a machine for dressing the whole of the warp before it is placed in the loom, which was made the subject of a patent by Mr. Radcliffe, the inventor. In the use of this machine the warp in its progress to the weaving beam is passed through a dressing of hot starch; it is then compressed between rollers to free it from the superfluous quantity of starch taken up, and is afterwards, in order to dry it, drawn over a succession of cylinders heated by passing steam through them; during this last part of the operation the warp is "lightly brushed as it moves along, and is fanned by rapidly revolving fanners." The flour used for this dressing operation throughout the cotton factories of this kingdom amounts in the year to at least 650,000 bushels. The number of power-looms used in cotton factories throughout the kingdom at the end of the year 1835 was stated by the inspectors of factories in a return laid before parliament to be 109,626. The number in England was 90,679; Scotland, 17,531; Ireland 1416. In Lancashire the number of spindles was 61,176; Cheshire, 22,491; Lanarkshire, 14,069.

Each of these looms, if of good construction and attended by a skilful weaver, was capable of producing 120 yards of cloth per week, or 6240 yards in the year, at which rate the annual productive power of the whole number of looms amounted to 684 millions of yards.

Hitherto it has not been practicable to produce any but coarse or heavy goods by means of the power-loom; fine calicoes, muslins, and fancy goods are woven by the hand. The number of hand-loom weavers cannot be ascertained with the same correctness as the number of power-looms, the latter being collected together in factories which are under the superintendence of official inspectors, while hand-loom weaving is altogether a domestic manufacture carried on in the cottages of the artisans. Computations of the number of these domestic looms have been made by different intelligent persons conversant with the trade, who have estimated them variously; the lowest at 200,000 and the highest at 250,000.

Mr. Kennedy, who is considered a good authority on this subject, supposed the value of cotton goods made in Great Britain in 1832, when the quantity of the raw material used was about 12 per cent. less than in 1833, was 24,760,000*l.* Mr. Baines, who has taken great pains to test the accuracy of his calculations in every possible way, has made the value amount, in 1833, to 31,338,693*l.* Of this value the part exported amounted to 18,459,000*l.*, and the value of the goods remaining for home consumption would therefore be 12,879,693*l.* (*Hist. of Cotton Manufacture*, p. 412.) Following Mr. Baines's mode of calculation, Mr. Porter estimated the value of the cotton goods manufactured in 1841 at 48,641,343*l.*; and as the exports, including yarn, amounted to 24,668,618*l.*, there would remain for home consumption goods to the value of 23,972,725*l.* The capital invested in the cotton manufacture in Great Britain is variously estimated at from 30,000,000*l.* to 34,000,000*l.*; and Mr. Baines regards the latter estimate as very moderate.

The number of persons returned under the head Cotton Manufacture in the Census Returns of 1841 is 302,376, to which should be added those returned under the heads Hose and Lace, which are branches of the Cotton Manufacture, and also a proportionate number of those who were returned as weavers, spinners, and factory workers ('fabric not specified'), and we have then a total of nearly half a million persons engaged in this great branch of national industry, and this at a time when it was in a very depressed state.

	Persons Employed.
Cotton . .	377,662
Hose . .	50,955
Lace . .	35,347
	463,964

The ages and sex of the above number (377,662) engaged in the manufacture of cotton fabrics were as follows:—

Males aged 20 and upwards.	138,112
under 20 . . .	59,171
Females aged 20 and upwards.	104,470
under 30 . . .	75,909

The employment of young persons in cotton factories is regulated by statute. [FACTORIES ACT.]

The first cotton-mill built in the United States was set to work in Rhode Island in 1790, and about the same time one was erected at Beverley, Massachusetts, by an incorporated company. The manufacture made at first so little progress in the United States, that up to 1808 not more than 15 spinning-mills had been erected. There was a great increase in 1812, occasioned by the war between England and America; again from 1820 to 1825 much capital was applied to this object; also in 1831 and 1832; and still more since the passing of the tariff of 1842, which imposed higher import duties on cotton and other manufactured goods generally.

In 1840 the number of cotton manufactories in the United States was 1240, which employed 2,284,631 spindles, and produced manufactured articles valued at 46,350,000 dollars. The capital invested was estimated at 51,000,000 dollars; and the number of persons employed, including dyers, printers, &c., was 72,119. The value of goods produced in Massachusetts in 1840 was 16,553,000 dollars; Rhode Island 7,116,000; Pennsylvania, 5,013,000; New Hampshire, 4,142,000; New York, 3,640,000; Connecticut,

2,715,964; New Jersey, 2,086,104; Maryland, 1,150,000 dollars; and in other States in smaller quantities. One-half of the cotton manufacture was carried on in Massachusetts and Rhode Island.

The great demand for cotton goods within the States at first prevented any very considerable exportation. Between 1826 and 1832 the total annual value of the shipments made was under 250,000*l.*, the greater part of which were to Mexico and the South American States. The annual value of the exports in the following years was as under:—

	Dollars.		Dollars.
1834	2,200,000	1837	3,758,000
1835	2,255,000	1838	2,975,000
1836	2,831,000	1839	3,549,000

In the year ending 30th September, 1842, the exports of cotton manufactured goods from the United States consisted of

	Dollars.
Printed and coloured piece goods	385,040
White	2,297,964
Twist, yarn and thread	37,325
Other cotton goods	250,361
	2,970,690

In the nine months ending 30th June, 1843, the value of the exports of cotton goods was 3,223,550 dollars, and the principal countries to which they were sent were China, Chili, Brazil, and Mexico, which took about four-fifths of the whole: it is stated in the official returns that white cotton goods of the value of 113,694 dollars were exported to the British East Indies. The value of the exports to China was 1,063,285 dollars; to Chili, 550,857 dollars; Brazil, 383,408 dollars; and Mexico, 193,027 dollars.

The quantity of cotton imported into France in 1787, the earliest year as to which any returns are given, was 4,466,000 kilogrammes, or not quite ten millions of pounds. In 1815 the importation was 16,414,606 kilogrammes; in 1820 had reached 20,000,000 kilogrammes; in 1825 it was still below 25 millions; in 1830 it amounted to 29¼ millions, and in 1835 reached 38,760,000 kilogrammes, and in 1840 it was 52,942,000 kilogrammes(116,000,000 lbs).

In 1840 the quantity of cotton spun in France was about one-fifth of that used in our mills, and the value of the exports from France, nearly one-third of which, according to Mr. Macgregor ('Commercial Statistics') are smuggled into Spain, was between one-fifth and one-sixth part of the value of the shipments from England. In 1820 the value of the exports of cotton manufactured goods was 29,000,000 fr., and in 1840 107,000,000 fr.; and the value of cotton twist exported in 1820 was 397,000 fr., and 593,000 fr. in 1840.

The cotton manufacture is of modern introduction in Switzerland. The first spinning-machine was established at St. Gall, in the year 1800; but Switzerland still imports considerable quantities of foreign-spun yarns for the use of her hand-loom weavers, as well as of power-loom cloths from England, which are dyed and printed, and afterwards exported. So great is the degree of perfection attained in the application of the colour denominated Turkey red, that calicoes and prints of that colour are imported from Switzerland into England: the same may be said of embroidered muslins.

Within the last few years the cotton manufacture has made great progress in the Rhenish provinces of Prussia and in Saxony, and also, though to a smaller extent, in Würtemberg and Baden. It is one of the objects of the German Customs' Union to foster the cotton and other manufactures by high duties on the cheaper products of England.

The cotton manufacture is the most generally diffused of all the branches of industry upon which the production of clothing depends. The greater part of the countries in which it is carried on limit their production of cotton goods to the wants of their own people. The perfection to which the spinning processes have been carried in this country has made the greater part of the world in some measure dependent upon our cotton-mills for the finer descriptions of yarns. In 1844 the exports of cotton goods, hosiery, and twist from England amounted in value to 25,831,586*l.*, or nearly one-half of the total exports. In the following years the declared value was as follows:—

	£		£
1820	16,516,748	1835	22,128,304
1825	18,359,526	1840	24,668,618
1830	19,428,664		

The following tables show the countries to which we exported cotton goods, hosiery, and twist and yarn, in 1842:—

I. Account of the Declared Value of British Cotton Manufactured Goods, Hosiery, Lace, and small Wares, and Cotton Yarn and Twist, Exported from the United Kingdom in 1842.

1. Cotton Goods.

Russia	£36,345
Sweden	5,481
Norway	26,231
Denmark	3,766
Prussia	104
Germany	757,771
Holland	475,465
Belgium	78,302
France	72,578
Portugal	602,311
Spain	32,724
Gibraltar	633,817
Italy and the Italian Islands	901,954
Malta	127,570
Ionian Islands	41,339
Morea and Greek Islands	552
Turkey	901,264
Syria and Palestine	240,678
Egypt	124,877
Tripoli, Tunis, Algiers, and Morocco	22,940
Western Coast of Africa	220,564
Cape of Good Hope	79,575
Cape Verd Islands	1,250
St. Helena	1,108
Ascension Island	6
Mauritius	79,887
East India Company's Territories and Ceylon	2,480,031
Sumatra, Java, and other Islands of the Indian Seas	194,173
Philippine Islands	39,360
China	468,539
New Zealand	1,791
British Settlements in Australia	69,312
Do. North America	435,511
Do. West Indies	613,632
Hayti	78,936
Cuba and Foreign W. Indies	283,596
United States of North America	358,573
Texas	1,452
Mexico	147,143
Columbia	128,641
Brazil	786,572
Rio de la Plata	374,451
Chili	555,002
Peru	354,265
Guernsey, Jersey, Man, &c.	47,781
Total	12,887,220

2. Hosiery, Lace, and small Wares.

Germany	£184,341
France	131,136
United States of North America	125,811
Belgium	91,380
Holland	70,282
British North America	49,979
British West Indies	42,549
Rio de la Plata	36,435
E. I. Co.'s Territories and Ceylon	35,366
Brazil	32,958
Italy and the Italian Islands	28,371
Chili	22,706
British Settlements in Australia	20,712
Cuba and Foreign W. Indies	19,639
Peru	19,636
Gibraltar	18,744
To 29 other countries, &c.	90,619
	1,020,664

3. Cotton Yarn and Twist.

	Declared Value.
Germany	£2,842,628
Holland	1,609,460
Russia	1,256,172
East India Company's Territories and Ceylon	545,075
Italy and the Italian Islands	480,658
Turkey	319,590
China	245,965
Sweden	124,199
Syria and Palestine	123,174
Norway	30,964
Malta	27,270
Portugal	20,868
Ionian Islands	17,336
Egypt	15,529
All other countries	112,576
	7,771,464

4. Exports of cotton twist and yarn, at various periods from 1820 to 1842:

	lbs.		lbs.
1820	23,032,325	1835	83,214,198
1825	32,641,604	1840	118,470,223
1830	64,645,342	1842	137,466,892

COUNCIL OF THE CHURCH, an assembly of prelates who meet, being duly convoked by the legitimate authority, for the purpose of defining questions of doctrine, or making regulations or canons in matters of discipline. There are various sorts of councils:

1. General or Œcumenic councils, which are considered as a representative and legislative assembly of the whole church, and to which all bishops are summoned. In the early ages of the Christian Church the general councils were convoked by the Roman Emperor; they have been since convoked by the Popes, at least for the Western or Roman Church. The authority of general councils is considered as binding on the whole church only in matters of faith when the canon establishes a dogma which it enjoins all the faithful to believe under pain of anathema and heresy. In matters of faith the Roman Church considers a general council to be infallible: some say, however, only after its canons have been confirmed by the Pope. All bishops have a right to attend and vote in a general council; the abbots and generals of monastic orders have also been admitted to vote in most councils by consent of the council. Priests and monks have also attended the councils as theologians and advisers, with a consultative and deliberative vote. In the Western Church the Pope, or his legate for him, presides in the council. For a council to be legitimate it is required that all the bishops should be called, whether they attend or not, except those who are declared by the church to be schismatical or heretical, and all deliberations should be free and unconstrained.

2. National councils, consisting of the bishops of a whole kingdom or state, which can be convoked by the sovereign power of such state; but the authority of such council is limited to the kingdom or state for which it is convened.

3. Provincial councils are convoked by the respective metropolitans, with the consent of the sovereign power, or the king, as in England. A bishop may also convoke a diocesan council, with the consent of his superior. (Benedict XIV. de Synodo diocesana.) The Church of Rome reckons several councils, though not œcumenic, previous to that of Nice, the earliest of which seems to be that held at Jerusalem, about A.D. 50, and which was attended by the apostles Peter, John, James, and Barnabas, and which is mentioned in the fifteenth chapter of the 'Acts of the Apostles.'

COUNCILLORS. [MUNICIPAL CORPORATIONS.]

COUNSEL, an abbreviation of counsellor. In England a counsellor is a barrister [BARRISTER], or one who has kept twelve terms at one of the four inns of court, and has been called to the bar. After keeping his terms a man may act as a conveyancer, special pleader, or equity draftsman, without being called to the bar, but he must take out a certificate under 9 Geo. IV. c. 49. The word counsel has no plural number, and is used to denote either one or more counsel. The duty of counsel is to give advice in questions of law, and to manage causes for clients. They are styled common-law, equity, or chamber counsel, according to the nature of the business they transact. They are supposed to work for nothing, but in fact they are paid. But, according to Mr. Justice Bayley, 1 Chit. R. 351—"they are to be paid beforehand, because they are not to be left to the chance whether they shall ultimately get their fees or not, and it is for the purpose of promoting the honour and integrity of the bar that it is expected all their fees should be paid when their briefs are delivered. That is the reason why they are not permitted to maintain an action for their fees." Though it is expected that all their fees should be paid before the work is done, this is very far from being the general practice; and sometimes the payment is deferred, and sometimes it happens that it is never made. The counsel is paid by the attorney or solicitor of the person whose business he does. Counsel may be retained generally, that is, to advocate any cause in which the retaining party may be engaged, or specially with reference to a pending cause; and generally speaking, a counsel cannot refuse a retainer: there are certain rules, however, by which their practice is regulated.

Counsel in a cause may urge and argue

upon anything which is contained in their instructions, and is pertinent to the matter in question, and it is not considered to be their business to inquire whether it be true or false: they are also at liberty to make comments on the evidence adduced on that part of the case to which they are opposed, and to cross-examine the witnesses of the opposite party.

Formerly, in cases of felony, counsel for the prisoner were not allowed to address the jury on his behalf: they might, however, examine and cross-examine the witnesses, and argue points of law; but now by stat. 6 & 7 Wm. IV. c. 114, all persons tried for felony may make full answer and defence by counsel.

Counsel are punishable by stat. West. 1. 3. Ed. I., c. 28, for deceit or collusion, and are so far under the jurisdiction of the judges, that in the event of malpractice they may be prohibited from addressing the court: there are also certain rules established by each court for the regulation of its own practice, to which counsel are subject.

COUNT, through the French word *comte*, from the Latin *comes, comitis*, meaning companion. The word, though simply meaning Companion, received various particular significations. Young Romans of family used to go out with the governor of a province and commander of armies, under whom they got an insight into public and military matters. They were called comites; Juvenal (*Sat.* viii. 127) speaks of the cohors comitum. Perhaps some of them acted as secretaries to the commander or governor, as in the case of Celsus Albinovanus, the friend of Horace, to whom he addresses the eighth epistle of the first book. With the establishment of the imperial power at Rome, comites were established about the emperor's person; and a great number of functionaries and officers received the title of comes, with some addition to indicate their duty. When the emperor sat as judge he had comites and jurisconsulti (jurists) with him. (Spartian, *Hadrian.* c. 18.) In the time of Constantine, comes became a title, and there were comites of the first and second class, and so forth. The term comes, as a title, was established both in the eastern and the western empire. Some of them were governors of provinces or particular districts. The rank and condition of these comites may be collected from the Theodosian Code, vi. tit. 12-20, with the commentary of Gothofredus (Godefroy). The kingdoms of modern Europe have inherited the tributary spoils of the lower empire. By substituting the word *grand* for that of *count*, which was a title common to all the officers or ministers of the emperors of the East, it is easy to show the analogy of the titles of modern court dignities to the antient. Thus the *comes sacrarum largitionum* has been called *grand almoner;* the *comes curiæ, grand master of ceremonies;* the *comes vestiarius, grand master of the wardrobe;* the *comes domesticorum, grand master of the royal household;* the *comes equorum regiorum, grand equerry*, &c. The *comes marcarum*, counts of the frontiers, which were formerly called *marches* (a denomination still in use in the papal states), took subsequently the title of *marquis;* an innovation which raised long and serious discussions among the learned in feudal right and court etiquette.

Under the first two races of the Frank kings, the counts were, as under the lower empire, officers of various degrees. The count of the palace was the first dignity in the state, after the *maire* of the palace. He presided in the court royal when the prince was absent, and possessed sovereign jurisdiction. He also exercised a great influence in the nomination of the king's delegates, who, under the title of counts, administered the provinces. A count had the government of a small district, often limited to a town and its dependencies. He was at the same time a judge, a civil administrator, and a military commander. In case of war, he led in person the contingent of his county to the army. The learned Dutillet, in his 'Recueil des Rois de France, de leur Couronne et Maison,' &c., expatiates on the functions of antient counts. With the progress of time, the counts, as well as the other officers appointed to govern the provinces, the towns, and the frontiers, succeeded in rendering their places hereditary, and in making themselves sovereigns of the districts of which they had only been created removable and revocable administrators.

At first they contented themselves with securing the reversion to their sons, then to their collateral heirs, and finally they declared those places hereditary for ever, under Hugh Capet, the son of Robert, count of Paris, who himself only obtained the throne partly in consequence of that concession. It was feudalism that introduced inheritance instead of election as a permanent rule in political successions. The supreme chief of the antient Franks, *koning* (Lat. *rex*), was a magistrate, and as a magistrate he was elected, although always from the same family. The inferior chiefs, *heri-zoghe, graven, rakhenburghe* (Lat. *duces, comites, judices*), were also elected. But when the feudal system attained its perfection, when men were no longer ruled by men, but lands by lands, and men by lands or by the legitimate heir of the lands, then no kind of election remained. One demesne made a king, as another made a duke, a count, a viscount, &c.; and thus the son of a count became a count, the son of a duke became duke, and the son of a king became king. Finally, to form a just idea of the formidable power of the feudal counts, we must refer to the period of the erection of the towns of the northern provinces of France into commonalties or republics, when their heroic population had to sustain a most deadly struggle, from the eleventh century to the middle of the fourteenth, before they could shake off the iron yoke of the counts and the bishops. The term "count" is now become in France a mere title, conferring no political power. In the papal states, as well as in those of Austria, it may be bought for a moderate sum; and in the other monarchical states of the continent, it is granted as a mark of imperial or royal favour.

The title of *earl*, or, as it was often rendered in official Latin, *comes*, companion, is of very high antiquity in England, being well known to the Saxons under the name of *ealdorman*, that is to say, *elder-man*, and also *shireman*, because each of them had the government of a distinct *shire*, or, as it is now generally called, *county*. The sheriff, under his Latinized name, is called vice-comes, or viscount, which term is now one of the titles of rank in the British peerage. The term count seems not to have been used in England as a title of honour, though the wives of earls from a very early period have been addressed by the title of countess. The king, in mentioning an earl in any writ or commission, usually styles him "trusty and well-beloved cousin" —a peculiarity at least as antient as the reign of Edward III.

COUNTY. [SHIRE.]

COUNTY COURT. [COURTS.]

COUNTY RATE. County rates are taxes levied for the purposes of defraying the expenses to which counties are liable. They are levied either under the authority of acts of parliament, or on the principle that as duties are imposed upon a county there must be a power to raise the money for the costs incurred in the performance of such duties.

The ancient purposes of the county rate "were to provide for the maintenance of the county courts, for the expenses incidental to the county police, and the civil and military government of the county; for the payment of common judicial fines; for the maintenance of places of defence (sometimes, however, provided by a separate tax common to counties and to other districts, called *burgbote*), prisons, gaols, bridges (when these were not provided for by a separate tax common to counties and to other districts, called *brukbote*), and occasionally high roads, rivers, and water-courses, and for the payment of the wages of the knights of the shire. Additions to these purposes, some occasional and some permanent, were made from time to time by statutes. The King's aids, taxes, and subsidies, were usually first imposed on the county, and collected as if they had been county taxes. But the first statute defining any of its present purposes (though now repealed as to the mode it prescribes for imposing the tax) was passed in the 22nd Hen. VIII. From that time up to the present new purposes have constantly been added, and new and distinct rates were constantly created for purposes of comparatively little importance, and to raise sums of money quite insignificant in amount."—(*Report on Local Taxation*, by the Poor Law Commissioners.)

The assessment and collection of sepa-

rate county rates was not only very inconvenient and troublesome, but so expensive that the charge of collection and assessment frequently exceeded the sum rated. For remedying this evil the 12 Geo. II. c. 29, was passed, whereby justices of the peace at general or quarter-sessions were enabled to make a general rate to answer the purpose of the distinct rates previously leviable under various acts of parliament for the purposes of bridges, gaols, prisons, and houses of correction, such rate to be assessed upon every town, parish, and place within the county, to be collected by the churchwardens and overseers along with the poor rates of every parish and paid over to the high constables of hundreds, by them to treasurers appointed by the justices, and again by them to whomsoever the justices should direct. The county rate for lunatic asylums is, however, by statute, a special rate, and so is likewise the county rate for shire-halls, assize courts, session-houses, judges' lodgings, &c.; but the provisions of the statutes under which these rates are levied are disregarded, and the justices pay the expenses out of the general county rate. This is the case also with the rate for the county and district police force, where such force is established, though it is directed to be a special rate. There are some other special rates which are required to be separate rates, one of which is the rate for reimbursing to overseers the costs incurred in the burial of dead human bodies found on the shore of the sea. The contributions of a whole parish to this rate would perhaps not amount to a farthing, and the expense is of course defrayed out of the general county rate.

In places where there is no poor's rate the county rate was directed by 12 Geo. II. c. 29, to be levied by the petty constable or other peace officer of the place in the same manner as poor rates are levied, and paid over by him to the high constable of the hundred. The counties of York, Derby, Durham, Lancaster, Chester, Westmoreland, Cumberland, and Northumberland, were excepted from the compulsory direction that the county rate should be levied along with the poor's rate, and it was left discretionary with the justices of those counties at quarter-sessions to direct the county rate to be levied either by the churchwardens and overseers along with the poor rate or by the petty constable, by an assessment after the manner of the poor-rate. The rates so levied are applicable to the repair of bridges, gaols, prisons, or houses of correction, on presentment made by the grand jury at the assizes or quarter-sessions of their wanting reparation. The act gave to the churchwardens and overseers a right of appeal against the rate on any particular parish to the justices at the next sessions. It also contained provisions enabling the justices to contract for repairs, to oblige collectors to account, &c. It was not the object of this act to impose any new rates, nor to vary the obligation to pay, but merely to facilitate the collection of the amounts previously leviable: it therefore contained an exception of places not theretofore liable to the payment of all or any of the county rates referred in the act, and also a provision that the rate should be assessed in every parish or place in such proportions as any of the rates by the former acts therein referred to had been usually assessed. But this last provision is now to be interpreted with reference to the next-mentioned act as applying only to the fair and equal proportionable rates.

By the 55 Geo. III. c. 51, further improvements were made in the assessments to county rates. The justices of counties at quarter-sessions were by it empowered to make a fair and equal county rate when circumstances required, for all the purposes to which the county stock or rate was then or should thereafter be made liable by law, extending to all parts of the county except liberties or franchises having a separate co-extensive jurisdiction. The act contained numerous provisions giving powers for enforcing payment of the rate; for ascertaining the value of property for the purpose of assessment; for regulating the right of appeal given by the former act; extending the provisions of the former act to that act; enabling counties where the rates had been regulated by local acts to make use of that act; extending the pro-

visions of the act to places having commissions of the peace within themselves, &c.

By the 56 Geo. III. c. 49, extra parochial and other places, though not rateable to the relief of the poor, were made subject to county rates, and certain powers were given for the ascertainment of boundaries between counties, ridings, &c., and other places of separate jurisdiction for the purpose of assessing and levying county rates.

By the 57 Geo. III. c. 94, the provisions contained in the 56 Geo. III. c. 49, as to appeals, were repealed and other regulations established in that respect; and it was provided that where there were no high constables the constables of the parish or place might levy the rates on the warrant of the justices.

By 58 Geo. III. c. 70, all such parts of former statutes as provided that rewards should be paid out of the public revenue to prosecutors upon conviction for various crimes were repealed, and it was enacted that in future the county rates were to be charged with the allowances to prosecutors in such prosecutions. By subsequent statutes the costs in the prosecution of certain misdemeanours are paid out of the county rates. By 7 Geo. IV. c. 64, the principle of compensation to witnesses and prosecutors at the expense of the county was carried into effect more extensively. In 1836, however, the government determined that one-half of the expense of prosecutions and the conveyance of prisoners should be defrayed out of the public revenue.

By the 1 Geo. IV. c. 85, the powers of former acts were extended to places where there were no separate churchwardens, and where no separate or distinct poor rate has been made for any place extending into two or more counties, ridings, or other divisions; justices were empowered to appoint persons to tax and assess the county rate in extra-parochial places where no poor rate exists, and certain regulations were made as to distress for rates.

By the 4 & 5 Wm. IV. c. 48, all business relating to the assessment and application of county rate is to be transacted in open court held upon due notice.

By the 5 & 6 Wm. IV. c. 76, § 112, after a grant of a separate court of quarter-sessions has been made to any borough the justices of the county in which such borough is situate are not to assess any property therein to any county rate thereafter to be made, but (§ 113) such boroughs are to bear the expenses of prosecutions at the assizes.

By 7 & 8 Vict. c. 33, high constables are relieved from the duty of collecting the county rate and paying it to the county treasurer, and these functions are to be undertaken by the Boards of Guardians.

Several local acts have been passed from time to time for regulating the county rates in particular counties. On this subject see Burn's 'Justice of Peace,' 29th edit., *County Rate*, where the different purposes for which county rates may be levied are enumerated at length.

The expenditure of county rates in England and Wales in 1792 and 1832 was as follows:—

	1792 £.	1832 £.	Inc. p. Cent.
Bridges .	42,237	74,501	76
Gaols, Houses of Correction, &c.	92,319	177,245	92
Prisoners' Maintenance, &c.	45,785	127,297	178
Vagrants .	16,807	28,723	70
Prosecutions	34,218	157,119	359
Lieutenancy and Militia .	16,976	2,116	
Constables .	659	26,688	4338
Professional .	8,990	31,103	248
Coroners .	8,153	15,254	87
Salaries .	16,315	51,401	215
Incidental .	17,456	32,931	88
Miscellaneous, Printing, &c.	15,890	59,061	
	315,805	783,441	

The amount disbursed in 1834 under the different heads of expenditure for which provision is made by the county rates was as follows:—

	£.
Bridges, Building and Repairs, &c. . .	72,532
Gaols, Houses of Correction, &c., and Maintaining Prisoners, &c.	222,787

	£
Shire-Halls and Courts of Justice, Building, Repairing, &c.	13,951
Lunatic Asylums .	12,371
Prosecutions . .	131,416
Clerks of the Peace .	31,880
Conveyance of Prisoners before Trial . . .	31,030
Conveyance of Transports	10,370
Vagrants, Apprehending and Conveying . .	7,621
Constables, High and Special	14,007
Coroners . .	15,648
Debt, Payment of Principal and Interest . .	78,022
Miscellaneous . .	52,112
	693,747

The expenditure in the following years was as under:—

		£
1835	..	705,711
1836	..	699,845
1837	..	604,203
1838	..	681,842
1839	..	741,407
1840	..	855,552
1841	..	1,026,035
1842	..	1,230,718
1843	..	1,295,615

In the last three years the county police expenditure, which in 1843 amounted to 243,738*l.*, is included.

From 1830 to 1838 the proportion of five heads of expenditure was 69 per cent. of the total expenditure:—Bridges, 9·3 per cent; Gaols, 9·7; Prisoners' Maintenance, 25·8; Prosecutions, 19·9; Constables and Vagrants, 4·3 per cent.

The county rate is levied on the same description of property as the poor's rate, that is, on lands, houses, tithes impropriate, propriations of tithes, coal-mines, and saleable underwoods: the term "lands" includes improvements of lands, by roads, bridges, docks, canals, and other works and erections not included under the term "houses." Under "houses" is comprehended all permanent erections for the shelter of man, beast, or property. Mines, other than coal-mines, are exempted, and the exemption extends to limestone and other stone quarries, or to other matter that is obtained by quarrying. The county rate is to be assessed upon parishes "rateably and equally according to the full and fair annual value of the messuages, lands, tenements, and hereditaments liable, or which might be liable, to be rated to the relief of the poor." The sum assessed in 1833 was about 8¾ per cent. (or rather more than one-twelfth) of the levy for the poor, out of which fund it is paid, and in 1843 the proportion was between one-sixth and one-seventh. About five-eighths of the assessment is paid by land, and three-eighths by houses, mills, manors, canals, &c. The act 55 Geo. III. c. 51, already mentioned, has not been found very successful in correcting unfair valuations, as the overseers on whom the revaluation depends have an interest in a low rateable value. "In some counties the contribution to the Land Tax serves as a scale for the proportionate contribution. In these cases the proportion has been unchanged since the year 1792, notwithstanding the subsequent alterations in the value of property. In other counties the valuation to the Property Tax made in the years 1814-1815 determines the scale of contribution. In other counties some ancient scale, of which the origin is unknown to the respective clerks of the peace, determines the proportion. In other counties the nominal valuation to poor's rate, uncorrected by the application of the powers of 55 Geo. III. c. 51, and made in some counties in or very early after the year 1739, and in other counties at various periods between that date and the present time, serves as the basis of the contribution to the county rate. All these various practices are alike complained of as unequal in the counties in which they are adopted." (Report on Local Taxation.)

In the session of 1845 a bill was brought in to amend the law relating to the assessing, levying, and collecting of county rates. It provided for the appointment by the justices at general or quarter sessions of a committee to consist of not more than eleven nor less than five justices, whose duty it should be to prepare a fair and equal county rate, with power to alter and amend it from time to time as circumstances might require. By § 4 the words "full and fair valuation" shall be taken to mean "the net annual value of any rateable property, that is to say, the rent at which the same might reason-

ably be expected to let for from year to year free of all tenants' rates and taxes, and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, and insurance, and other expenses (if any), necessary to maintain them in a state to command such rent." The fate of this bill is not at present (May, 1845) known.

The proportion in the £ to the county rate valuation in England and Wales and for several of the counties is as follows:—

England, 3¼*d.*; Wales, 3½*d.*; Northumberland, 1½*d.*; Bedford, 12½*d.*; Westmoreland, 2½*d.*; Middlesex, 3½*d.*; Lancaster, 1½*d.*; Anglesey, 24*d.*; Pembroke, 1*d.*

COURT BARON. [MANOR.]

COURT-MARTIAL, a tribunal occasionally instituted for the purpose of trying military and naval men for the commission of offences affecting discipline in either of those branches of the public service.

Courts for the trial of rebels by martial law appear to have early existed in this country; and in the time of Henry VIII. the Marshal of England held one regularly for the trial of causes connected with military discipline. In the reigns of Elizabeth and her successor, those courts of war, as they were called, were superintended not by the marshal, but by a president chosen for the purpose. This president was probably a general or field-officer, but captains of companies were allowed to sit as members. The colonel of each regiment was charged with the duty of preparing the evidence relating to offences which fell under his cognizance, and of bringing it before the court. But courts-martial in their present form were instituted in the reign of James II.; and in the ordinances of war published in 1686 they are distinguished as general or regimental. Subsequently to the revolution, their powers have been expressly regulated by parliament, and are fully detailed in what is called the Mutiny Act, which is revised and renewed every year. Naval courts-martial are regulated by the statute 22 Geo. II. c. 33.

General courts-martial are assembled under the authority of the king, or of an officer having the chief command within any part of his majesty's dominions to whom such authority may be delegated. Regimental courts-martial are held by the appointment of the commanding officer of the regiment. The East India Company's Mutiny Act empowers the governor-general in council, and the governor in council, at the presidencies of Fort William, Fort St. George, and Bombay, and at St. Helena, to appoint general courts-martial, or to authorize any military man not below the rank of a field-officer to do so. What are called detachment courts-martial may be either general or regimental, and their appellation is derived from the nature of the command with which the officer convening the court is invested.

The chief crimes of which a general court-martial takes cognizance are mutiny, abandonment of a fortress, post, or guard committed to the charge of an officer or soldier, disobedience of orders, and desertion: these crimes, if proved to their greatest extent, are punishable with death; and the penalty extends to any military man, being present, who does not use his best endeavours to prevent them. In desertion is included the fact of enlisting in any regiment without having had a regular discharge from that in which the offender may have last served. The practice of sending challenges between commissioned officers is punished with cashiering; between non-commissioned officers and privates, with corporal punishment: and, in all cases, seconds and accessories are held to be equally guilty with the principals. Self-mutilation, theft, making false returns of stores, and neglect of ordinary duty, in non-commissioned officers and privates, are usually punished by the infliction of a certain number of lashes, not exceeding one thousand; and men of the former class may, in addition to other punishments, be suspended, or degraded to the ranks. There are many offences which might tend to the subversion of discipline, but which are hardly capable of being precisely defined, as immoralities, and behaving in a manner unbecoming an officer and a gentleman; of these the courts-martial take cognizance, and on conviction the offender may be

dismissed from the service. At home, military men are not, in general, amenable to courts-martial for civil offences; but abroad, where there may be no civil courts, the case is different.

The provisions of the Mutiny Act affect not only the cavalry and infantry of the regular army, but extend to the officers and privates in the corps of artillery, engineers, and marines; to all troops in the employment of the East India Company, or serving in the colonies; to the militia during the time that it is assembled and being trained; and, lastly, to the yeomanry and volunteer corps. All are subject, without distinction, to trial and punishment by courts-martial.

The rules of the service require that the president of every general court-martial should be a field-officer, if one of that rank can be obtained; but, in no case, must he be inferior in rank to a captain. And it should be observed, that none of the members are to be subalterns when a field-officer is to be tried. As the president has the power of reviewing the proceedings, it is prescribed, and the propriety of the regulation is manifest, that he be not the commander-in-chief or governor of the garrison where the offender is tried. A judge-advocate is appointed to conduct the prosecution in the name of the sovereign, and act as the recorder of the court.

No general courts-martial held in Great Britain or Ireland are to consist of less than thirteen or nine commissioned officers, as the case may require; but in Africa and in New South Wales the number may be not less than five; and, in all other places beyond sea, not less than seven. Commonly, however, a greater number are appointed, in order to guard against accidents arising from any of the members being found disqualified or falling sick. An uneven number is purposely appointed, in order that there may be always a casting vote; and the concurrence of two-thirds of the members composing the court is requisite in every capital sentence. No officer serving in the militia can sit in any court-martial upon the trial of an officer or soldier in the regular army; and no officer in the regulars is allowed to sit in a court-martial on the trial of an officer or private serving in the militia. Likewise, when marines, or persons in the employment of the East India Company, are tried, the court must be composed of members consisting in part of officers taken from the particular service to which the offender belongs. The members both of general and regimental courts-martial take rank according to the dates of their commissions; and there is a particular regulation for those who hold commissions by brevet. [BREVET.] They are always sworn to do their duty, and witnesses are examined upon oath.

In the accusation the crime or offence must be clearly expressed, and the acts of guilt directly charged against the accused; the time and place must be set forth with all possible accuracy; and, at a general court-martial, a copy of the charge must be furnished by the judge-advocate to the accused, that he may have full opportunity of preparing his defence. The accused has the power of challenging any of the members, but the reason of the challenge must be given, and this must be well founded, otherwise it would not be admitted; for the ends of justice might be often defeated from the impossibility of getting members to replace those who were challenged.

The court must discuss every charge brought against the accused, throwing out only such as are irrelevant; and judgment must be given either upon each article separately, or the decision of the court upon all may be included in one verdict. The evidence is taken down in writing, so that every member of the court may have the power occasionally of comparing the proceedings with his own private notes; and he is thus enabled to become completely master of the whole evidence before he is required to give his opinion. At the last stage of the trial the decisions of the several members are taken in succession, beginning with the junior officer on the court: a regulation adopted obviously in order to insure the unbiassed opinions of those who might otherwise be influenced by deference to the members who are superior to them in age or rank.

Regimental or garrison courts-martial are appointed by the commanding officer,

for the purpose of inquiring into criminal matters of the inferior degrees; and they are empowered to inflict corporal punishments to a certain extent only. The articles of war require that not less than five officers should constitute a court of this nature, or three when five cannot be obtained. The practice is to appoint a captain as president, and four or two subalterns as the case may be; the court has no judge-advocate to direct it; therefore the members must act on their own responsibility. The proceedings are to be taken down in writing, and the sentence cannot be put in execution till it has been confirmed by the commanding officer, or by the governor of the garrison.

No commissioned officer is amenable to a regimental court-martial; but if an inferior officer or private should think himself wronged by such, he may, on application to the commanding officer of the regiment, have his cause brought before a regimental court-martial, at which, if the complaint is judged to be well founded, he may on that authority require a general court-martial to be held.

An appeal may be made from the sentence of a court-martial by the party who conceives that he has suffered injustice: the appeal lies from a regimental to a general court-martial; and from this to the supreme courts of law in the kingdom. It is easy to imagine, however, that the superior court will refuse to receive the appeal unless there should be very satisfactory evidence that the merits of the case have not been fairly discussed.

After the sentence of the court-martial has been pronounced, it is transmitted to the king, who may either confirm it, or, if sufficient reason should exist, may, on the ground that the process is not complete till the royal sanction has been given to the judgment, return it to the court for revision; or again, by virtue of his prerogative, he may remit the punishment awarded.

The chief distinction between the trial by court-martial and by jury is, that in the latter the verdict must be unanimous, while in the former the concurrence of a majority only in opinion determines the verdict. The writers on military law have endeavoured to show that the advantages in this respect are on the side of the court-martial: they contend that every member of such court delivers the opinion which he has formed from the evidence before him; while it may frequently happen in other courts that, in order to procure unanimity, some of the jury must surrender their own opinions. It may be observed, however, that in such a case the decisions are at least of equal value, since, in the event of a concession of private judgment, the verdict is in fact formed on the opinion of the majority.

(Grose, *Military Antiquities;* Tytler, *Essay on Military Law;* Samuel, *Historical Account of the British Army;* Simmons, *On the Practice of Courts-Martial,* with *Supplement.*)

COURTESY OF ENGLAND is the title of a husband to enjoy for life, after his wife's decease, lands of the wife of which she and the husband were seised in deed in the wife's right, for an estate of inheritance, and to which issue of the marriage is born which by possibility may inherit. It is said to be called courtesy of England as being peculiar to this country. In the law of Scotland however it is known under the title of "jus curialitatis," and it is also stated in the laws of the Alemanni, Lindebrog, 'Codex Legum Antiquarum,' 1613, p. 387, 'Lex Aleman.' c. 92; though by the law of the Alemanni the husband took the inheritance under circumstances similar to those that establish the title to a life estate only in the English law. This title of the husband's tenancy of the estates of his wife depends upon a valid marriage, the seisin of the husband and wife in right of the wife during marriage of the same estate respecting which courtesy is claimed, issue born alive during the wife's life which is capable of inheriting, and the previous death of the wife. Lands held by the wife descendible only to her sons would not, in case of the birth of a daughter, be subject to this claim of the husband; nor would a child brought into the world by the cæsarean operation, after the mother's death, establish it. It differs from the similar right of the wife to dower in several respects. [DOWER.]

By the custom of Gavelkind, a man

may be tenant by the courtesy without having had issue by his wife; but he has only half of the lands, and he loses them if he marries again. There is no tenancy by the courtesy of copyhold lands except by special custom, and the customs are various. (Cruise, *Digest* i. 'Copyhold.')

COURTESY OF SCOTLAND, otherwise called in the law of that kingdom 'jus curialitatis,' or right of courtship, is substantially the same with the courtesy of England. As in the latter kingdom. five things are necessary to it; namely, marriage, that the wife is an heiress and infeft, issue, and the death of the wife.

As to the marriage, it must indeed be a lawful marriage, but it is not necessary that it be regular and canonical; it is sufficient that it is valid in law, whatever be the precise form in which it became so. According to the ancient borough laws, c. 44, the courtesy extended only to such lands as the woman brought in tocher; but afterwards it was the lands to which she had right by inheritance, as the law still is. It was always the law that the wife must be heritably infeft and seised in the lands. The fourth requisite is, inheritable issue born alive of the marriage; that is to say, the child born must be the heir of the mother's estate, and it must have been heard to cry; for though it be otherwise in England, crying is in Scotland the only legal evidence of life. In the last place, by such issue the husband has during the life of the wife only *jus mariti*, as Skene says (*De verb. signif. voce Curialitas*); after her decease he has *jus curialitatis;* or as Blackstone speaks, with reference to the law of England, the husband by the birth of the child becomes tenant by the courtesy *initiate*, but his estate is not *consummated* till the wife's death; which is the fifth and last requisite to give the complete right of courtesy, the husband needing no seisin or other solemnity to perfect his title.

COURT OF RECORD. [COURTS.]

COURTS. The word court has come from the French *cour*, which is from the Latin *curia*. The Roman citizens were originally distributed into thirty curiæ, which were political divisions; but the name curia was also given to the buildings in which the curiæ met. The place of assembly of the Roman Senate was also called curia, and the name is often used to signify the senate or body of senators. The name curia was in fact given to a place either for the celebration of religious observances or the transaction of civil business. The French word cour is defined to be "a part of the house which is not built upon, and is immediately behind the carriage entrance or other entrance, and in the better sort of houses is paved." (Richelet, *Dictionnaire.*) It also signifies the residence of a prince (Aula); the government of a country, as la cour de la France; the judges of a supreme court, or the court itself, as la cour de parlement. These various significations occur in the English language: we speak of the court of a house, of the king's court, of the high court of parliament, and of the courts of law and equity.

The courts of common law in this country, like most other branches of our constitution, have grown up gradually with the progress of the nation, and may be traced back, partly to the institutions of our Anglo-Saxon forefathers, and partly to the more artificial systems introduced under the government of the Normans.

From the earliest times of which we have any account, we find the tribunals of the Germanic nations consisting of a presiding officer, called graf reeve or earl, comes or count; together with certain assessors, whose denominations (and probably their functions also) were different among different tribes and at different periods. Of this nature were the earliest tribunals with which we are acquainted in this country. The most important of these was that whose jurisdiction extended over a shire or county, in which the presiding officer was at first the earl, alderman, or count; and subsequently, his deputy the vice-count or sheriff (shire-reeve). This tribunal exercised ecclesiastical as well as civil jurisdiction, and the bishop sat as an associate to the earl or sheriff.

The judicial functions of this court were divided into four distinct branches. The first included all ecclesiastical offences; and in these the bishop was judge,

and the count or sheriff his assistant, and if the delinquent disregarded the censures of the church, he enforced the sentence by imprisonment. The second branch (in which the sheriff was judge) included all temporal offences, such as felony, assaults, nuisances, and the like. The third head included all actions of a purely civil nature: here the sheriff was the presiding officer, and executed the judgment; but the judges were the freeholders who did suit to the court. And, fourthly, the sheriff's court held an inquest yearly of frank pledge. One branch of the jurisdiction of this tribunal was abolished by William the Conqueror, who separated the ecclesiastical from the civil power, and the bishop was no longer associated with the civil magistrate. The view of frank pledge now exists only as a form, but the other two branches of jurisdiction still subsist, though with diminished power and importance.

In order to exercise his criminal jurisdiction, the sheriff was required twice in every year to make a tour or circuit of his county. The power of determining felonies was taken away by Magna Charta, but the remains of this tribunal are still known as the sheriff's tourn, in which cognizance is taken of false weights, nuisance, and other misdemeanors. The civil jurisdiction of the sheriff still continues in the county court, the powers of which were limited to cases under forty shillings, at least as early as the reign of King Edward I.: and that sum now (except in case of replevin) limits the ordinary jurisdiction of the county court.

The land over which the jurisdiction of the sheriff extended, is said to have been distinguished as reve land. The thanes or nobles had, in the lands granted to them, a similar jurisdiction of their own, both civil and criminal. (1, Reeve's *Hist. of English Law*, 7.) The limits between the jurisdiction of the sheriff and that of the lord were strictly preserved. But when the lord had no court, or refused to do justice, or when the parties were not both subject to his jurisdiction, the suit was referred to the tribunal of the reeve; and a suit commenced before the lord might be removed by the defendant before the higher tribunal.

The civil tribunal of the lord was similar to the county court in its constitution and its powers, except that the presiding officer was not a public functionary (as the reeve was), but the bailiff of the lord. This court still exists under the style of the court baron, and is incident to every manor in the kingdom. The judges are the freeholders who owe suit and service to the lord of the manor, and if there are not at least two such freeholders in the manor, the court is lost. This was formerly the proper court in which to commence real actions to try the title to lands within the manor. The lord's court in criminal cases, in which he had the same powers that the sheriff exercised in his turn, was called the Leet.

The same powers which were exercised over a particular manor by the court baron and court leet, were also exercised over particular hundreds by the hundred court and the leet of the hundred. But the number of these courts was much diminished by stat. 14 Edward III., by which all hundreds, except such as were of estate in fee, were rejoined (as to the bailiwick of the same) to the counties at large.

Besides these courts of inferior jurisdiction, there was also a Supreme Court in which the king presided. In the Saxon age, and for some time after, the legislative, the administrative, and the judicial functions of the government had not been separated; and the Wittenagemote, or meeting of the wise, was consulted by the king in all these departments indiscriminately. The Anglo-Saxon king had the same jurisdiction over his thanes that they had over their own vassals. He punished all enormous crimes committed against the king's peace. His court was likewise open to all those to whom justice had been refused in the inferior courts; and he had the power of punishing the judges if they pronounced an iniquitous sentence. It also seems probable that the king's court was a court of appeal, in which the judgments of all other tribunals, if erroneous, might be reversed.

The Norman Conquest does not seem to have produced any immediate change

in the constitution of this national assembly, which thenceforth became more known as the Great Council. The members exercised the same varied functions as under the Saxons; but when they sat in their judicial capacity, they had the assistance of the great officers of state and certain persons learned in the law, styled justiciars, or justices. William the Conqueror also created an officer to preside over judicial business, under the title of chief justiciar. The functions of this court thus became gradually separated from the general business of the grand council; and from being held in the hall of the king's palace, it was distinguished by the style of Aula Regis. A great distinction was drawn between this and all the courts of Saxon origin, from the mode of authenticating its proceedings. There were at this time no written memorials of legal proceedings, and indeed of few other public acts; and when it was necessary to establish any judgment or statute which had been made by the king assisted by his council, it was usual to call the testimony of some of the nobles who were present, to bear *record* of the fact. In progress of time, all such proceedings were written down at the time on parchment, the nobles present signing their names as witnesses, and so bearing record of the truth of what was there alleged. The writing itself was called a Record; and it was held to be evidence so conclusive, that when produced, nothing was allowed to be alleged in derogation of it. The entry of proceedings on record was adopted in the judicial, as well as in the other departments of the great council, and hence the Aula Regis became distinguished as *a court of record*. The power and importance of the Aula Regis rapidly increased. It not only maintained the former powers of the council in punishing offences against the public, in controlling the proceedings of inferior courts, and in deciding on questions relating to the revenue of the king, but it engrossed also a great portion of the "common pleas," or causes between party and party. And though we may suppose that it was only the more important causes that were taken into the Aula Regis, yet as early as the reign of Edward I., when the jurisdiction of the county courts was confined to 40*s*., all actions above that amount were brought into the king's courts.

The Aula Regis seems at a very early period to have been distinguished as exercising three several functions, according to the different natures of the causes that were brought before it, which are treated of in our earlier legal writers as Pleas of the King, Common Pleas, and Pleas of the Exchequer. The bond of connexion between these several jurisdictions was the chief justiciar, who presided over all of them. But in the reign of Edward III. this office was abolished, and thus were finally destroyed the unity of the Aula Regis and its connexion with the grand council, which became henceforth essentially a legislative body; and though it still retains traces of its original functions in its title of the *High Court* of Parliament, yet it has ever since ceased to exercise any judicial powers, except in cases of impeachment, or as a court of ultimate appeal. On the dissolution of the Aula Regis, the three courts of the King's Bench, the Common Pleas, and the Exchequer, had each of them a perfectly distinct and separate existence. The Court of King's Bench had the control of all inferior courts, and the cognizance of all trespasses against the king's peace; the Court of Exchequer had cognizance of all cases relating to the revenue; and the Court of Common Pleas was the only court for causes of a purely civil nature between private persons. The Courts of King's Bench and Exchequer still retain each of them its peculiar jurisdiction; and the Common Pleas is still the only court in Westminster in which the three real actions that remain since the passing of 3 & 4 Wm. IV. c. 27 can be tried; but the great mass of causes between party and party may now be brought indiscriminately in any of the three courts. The King's Bench and the Exchequer originally contrived by fictitious proceedings to appropriate to themselves a share in the peculiar jurisdiction of the Common Pleas.

There was likewise another court, of a more limited character, which, though held in the Aula Regis, does not appear

ever to have been under the control of the chief justiciar, the Court of the Marshalsea, which had jurisdiction where one of the parties at least was of the king's household. Charles I. created by letters patent a new court, styled the Court of the Palace, with jurisdiction over all personal actions arising within the verge of the palace, that is, within twelve miles of Whitehall. These courts are now held together every Friday. The Court of Marshalsea is, in fact, disused, but the Palace Court is in active operation.

The Saxon kings had been in the habit of making progresses through their dominions for the purpose of administering justice. This practice was not continued by William the Conqueror; but he annually summoned his great council to sit at the three feasts of Easter, Whitsuntide, and Christmas, in three different parts of the kingdom—Winchester, Westminster, and Gloucester. But when the great mass of the legal business of the country was brought into the king's courts at Westminster, it became necessary to take some more efficient measures for the trial of causes in the country.

The first expedient adopted was to appoint itinerant judges, justices in Eyre, who travelled through the kingdom, holding plea of all causes civil or criminal, and in most respects discharging the office of the superior courts. These itinera, or Eyres, usually took place every seven years.

About the end of the reign of Edward III. this system was wholly discontinued, except as to pleas of the king's forests, the functions of the justices in Eyre being superseded by the justices of Nisi Prius. This system was first established by a statute of Edward I., which, in order to prevent the expense of bringing up the juries to the king's courts at Westminster, provided that certain judges of those courts should be appointed to make circuits twice a year for the trial of issues upon which judgment was to be given in the court above. This system is still in operation. The justices of Nisi Prius also receive commissions of Oyer and Terminer and of gaol delivery, to authorize them to try criminals; and a commission of assize under which they used to try a peculiar species of action called assizes. These actions have long been obsolete; but the name of assizes is still given to the sittings of the justices on circuit under their several commissions.

Under the Norman kings the fines, amerciaments, and forfeitures in the king's courts constituted a considerable portion of the revenue, and the administration of justice was an important branch of the royal prerogative; but, like other branches of the prerogative, we sometimes find it in the hands of a subject, either by grant from the crown, or by prescription, which, according to legal notion, supposes a grant, though such supposition is often at variance with probability: within the counties Palatine and other royal franchises, the earls or lords had regal jurisdiction, saving the supreme dominion of the king. They had the same right as the king to pardon offences; they appointed judges of eyre, assize, and gaol delivery, and justices of the peace; all legal proceedings were made in their name, and offences were said to be committed against their peace, as in other places against the peace of the king. These royal prerogatives were, for the most part, re-annexed to the crown by stat. 27 Hen. VIII.; but the form of the judicial establishment still remained. [PALATINE COUNTIES.] But besides these palatinate jurisdictions, created to increase the power and gratify the pride of the nobles on whom they were conferred, the crown has also from time to time created courts, with a jurisdiction united in point of territory, and always under the control of the king's superior courts. If, in the Saxon times, the boroughs had courts similar to those of the hundreds, there are now no traces to be found of their existence; but however that may be, it is certain that when commerce increased, it was found of the utmost importance to the boroughs to be relieved from the jurisdiction of the feudal lord, and at the same time to have some court of justice to apply to, less distant, dilatory, and expensive than the king's courts at Westminster; and accordingly there has, at some time or other, been granted to almost every bo-

rough of any importance a civil and criminal jurisdiction within certain prescribed limits. These courts were in all cases courts of record, but in other respects were not modelled on any uniform system. There was the greatest possible variety in their constitution and the extent of their powers; but the mode of proceeding in all of them was founded on the common law and the practice of the superior courts, and a writ of error lay into the King's Bench, except from the courts of London and the Cinque Ports. By far the greater number of these courts have fallen into disuse. One of the causes of their inefficiency, the want of competent judges and juries, has been partially removed by the Municipal Corporations Act, and a greater uniformity has been introduced by giving to all of them jurisdiction as far as 20*l*. But in order to bring these courts into active operation, it still remains for the legislature to provide some more simple means for carrying on their ordinary proceedings; to give them better means of executing process, and of compelling the attendance of witnesses; to secure the efficiency and responsibility of the inferior ministers, and to restrict the power of removing trifling suits into the superior courts. The general incompetency of inferior courts in carrying on the ordinary proceedings in a cause is attested by a plan which has lately been introduced by the legislature. Any of the courts at Westminster is authorized, when a cause commenced there has been carried through all its preliminary stages, to send it by writ of trial, to be tried before any inferior judge, and, after trial, the cause is returned, and judgment given in the superior court. If the borough courts should ever be brought into a state of activity, the system of writs of trial, which is merely a substitute for local tribunals, would probably fall to the ground.

Whenever that time shall arrive, it will be a curious thing to trace the history of the administration of justice, which, under the Saxons, essentially local, rising from the smaller jurisdiction gradually to the higher, became, under the Norman dynasty, centered in one point, the king being the fountain of justice. This system of centralization, connected as it was with the principles of feudalism, which so long prevailed in this island with peculiar force, was elaborated, in the course of centuries, to a high state of perfection; it absorbed the remains of the ancient local jurisdictions, and stunted all attempts at the establishment of new. But as the artificial systems and feudal associations, which owed their establishment here to the Normans, gradually wear away, people are prepared to revert to the simpler and more popular institutions which existed ages ago among our forefathers, and which seem to be peculiarly adapted to the character of the Germanic nations.

There is a great distinction between Courts of Record and courts not of record: courts of record are the king's courts of common law, and have power to fine and imprison, which is not the case with courts not of record. From the judgment of a court of record there lies an appeal to the superior courts by writ of error: in courts not of record this is effected by a writ of false judgment. The county court, court baron, and hundred court, are courts not of record. The other courts of common law which we have mentioned are courts of record.

The great mass of the litigation of the kingdom is carried on by means of the superior courts of Westminster. In each of these courts there is a chief justice and four puisne judges. In the Exchequer these are styled the chief baron and barons, a title which points to the time when their office was filled by the lords of parliament. Another remnant of the original constitution of the courts appears in the judges being addressed as "my lord," which is always given to the judges in their official character.

The number of puisne judges has varied at different times. During the reigns of the Stuarts there were frequently four, but after the revolution the number seems to have been constantly three in each court, constituting, together with the two chief justices and the chief baron, the twelve judges of England. By an act of parliament of the year 1830, a fourth puisne judge was added to each court, making the total number of the

superior judges of common law fifteen instead of twelve. But the five judges never sit all together, the full court consisting, as formerly, of four only.

During the terms, which are four periods in the year of about three weeks each, the three courts sit at Westminster for the determination of all questions of law; and twice a year fourteen of the judges make their circuits through England and Wales, to try, with the assistance of juries, all disputed questions of fact that arise in the country. Actions brought in Middlesex or London are tried in the same manner at the sittings which are held on certain days in and immediately after every term.

From each of the three courts there lies an appeal by writ of error to the Court of Exchequer Chamber. This is not a permanent court, consisting always of the same members; but from whichever of the three courts the appeal is made, it is brought before the judges of the other two. From the constitution of this tribunal, it is evident that where any considerable difference of opinion exists among the fifteen judges, it is incapable of effecting one of the chief purposes of a court of appeal—that of producing uniformity of decision; and, accordingly, a further appeal lies by writ of error to the House of Lords.

For the history of the courts, see Reeve's *History of the English Law;* Maddox's *History of the Exchequer;* Palgrave's *Progress of the English Commonwealth;* Allen's *Inquiry into the Prerogative.*

COURTS CUSTOMARY. [COPYHOLD.]

COURTS ECCLESIASTICAL. [ECCLESIASTICAL COURTS.]

COURTS OF RECORD. [COURTS.]

COVERTURE. [WIFE.]

CREDENTIALS. [AMBASSADOR.]

CREDIT, in commerce and in political economy, signifies the trusting or lending of one man's property to another. The man who trusts or lends is said to give credit, and he who is trusted is said to obtain it. The one is called a creditor, and the other a debtor.

Credit is given either in goods or in money. By the former mode goods are supplied to a purchaser, for which the payment is deferred for some fixed period, or indefinitely, and the person who supplies them indemnifies himself for the delay by an increased price. By the latter mode, money is advanced, upon security or otherwise, and interest is charged upon the loan. [INTEREST; MORTGAGE.] Both these modes are used, in conjunction with each other, in the large transactions of commerce. A manufacturer, for example, sells to a merchant, for exportation, goods to the value of a thousand pounds. The merchant, however, is unable to pay for them until he has received remittances from abroad; and the manufacturer, aware of his solvency, is contented to receive in payment a bill of exchange, due at some future period. [EXCHANGE, BILL OF.] But in the mean time he is himself in need of money to carry on his business; and instead of waiting for the payment of the bill when it shall become due, he gets it discounted by a banker or other capitalist. Thus having given credit to one person in goods, he obtains credit from another in money. In this and other ways capital is circulated and applied to the various purposes for which it is required. But without entering further upon the practical methods by which the mercantile system of credit is conducted, it is proposed to inquire into its causes and into its economical uses and results.

There can be no system of credit until there has been a considerable accumulation of capital; for when capital first begins to be accumulated, those who possess it apply it directly in aid of their own labour. They have no superfluity which they can afford to lend to others; and they are generally engaged in some business in which their savings can be profitably employed. As a country increases in wealth, many persons acquire capital which they cannot employ in their own business, or can only employ by offering inducements to purchase in the shape of deferred payments. Others, again, inherit capital from which they wish to derive an income without the trouble of personally superintending its application. It is from these classes of persons that lenders of capital arise; and

they have no difficulty in finding borrowers. Setting aside that countless class of mankind whose maxim it is to get money or money's worth, honestly if they can, but at all events to get it—who will borrow whenever others will lend, and reckon the loan as so much money earned, most men have an instinctive perception that the next best thing to having capital of their own is to have the use of the capital of others. The efficacy of capital is very soon discovered as an instrument for the production of wealth, and those who have it not are willing to pay for its use; or, in other words, to share with a capitalist the profits of their own industry, on condition that he intrusts to them such funds as they require for making it productive. Thus as soon as a sufficient capital exists, a system of credit has a natural tendency to arise, and will continue to grow with the increase of capital, unless it be checked by a general insecurity of property, by imperfect legal securities for the payment of debts, or by a want of confidence in the integrity of the parties who desire to borrow. When the society and laws of a country are in a sound state, and capital is abundant, credit comes fully into operation.

The precise use of credit as an agent in the production of wealth is that it gives circulation to capital, and renders it available wherever it can be most profitably employed. It does for capital what division of employments does for labour. Without augmenting its quantity it increases its utility and productiveness. Credit, in fact, may be best understood by regarding it as one of the many forms in which the division of employments facilitates the production of wealth. Without the aid of capital, the labour of man is comparatively ineffectual; and credit, by circulating capital among those who are engaged in the productive employment of labour, promotes the most essential of all divisions of industry—that which uses and makes effective the ingenuity of men in those pursuits for which they are adapted. [DIVISION OF EMPLOYMENTS.]

To employ capital productively is a business requiring great knowledge, skill, and industry; and is rendered more effective by a division of superintendence, as manual labour is facilitated by a judicious distribution of employments among several hands. Every man who borrows money for the legitimate purposes of industry, and applies it with judgment, is really the agent of the capitalist, in executing duties which the capitalist himself would be unable to perform. A man's capital would be comparatively useless without an active superintendence, and a union of skill and industry in a particular business. These qualities are placed at his disposal by the system of credit, and stimulated to exertion by a share in the profits arising from the use of his capital. If the capitalist should trust persons improvidently, these useful results will not follow; but it is his peculiar province, as it is his interest, to exercise caution and judgment in the investment of his own capital; and if he fail to do this, his fortune will suffer in precisely the same manner as if he superintended a factory himself without understanding the business, and employed idle and ignorant foremen and unskilled operatives.

These illustrations will suffice to explain the nature and uses of credit: but it must always be borne in mind that in circulating capital and making it available in aid of industry, it calls no new capital into existence. It makes the existing capital of a country more productive, and consequently accelerates the accumulation of fresh capital; but credit cannot be, in itself, a substitute for capital. A man without any capital of his own may carry on business by the aid of credit; but he is merely using the capital of another. No man can lend his money, and still use it himself. It is not ubiquitous—nor can it serve two purposes at once. If a man does not use his own capital, he may lend it to another to use; but it is impossible that he can both use it himself and allow another to use it at the same time. He cannot use it in person and by proxy.

Stated in this manner, the truth of these principles is obvious; yet so great is the influence of credit in stimulating enterprise, that it is constantly mistaken for a distinct productive agency. Thus it is said, for example, that wherever credit is freely obtained in a country, great pro-

sperity is the result; and it is undeniable that facilities in obtaining credit and prosperity are ordinary concomitants; but they are both equally the results of an abundance of capital seeking employment, under circumstances favourable for its profitable use. If credit be granted too freely for the amount of capital by which it is supported, or if it be forced beyond the natural demands of trade, speculations and improvidence are encouraged which are ruinous to the parties concerned, and deeply injurious to society. An apparent prosperity exists for a time, but when the day of reckoning arrives, it is discovered that credit, instead of creating capital, has merely diverted it from one investment to another more speculative and hazardous, which at best can only be made ultimately profitable by a continuance of the credit by which it was encouraged. But if this credit be limited or withdrawn, what becomes of the fictitious capital upon which so much reliance had been placed? Without any failure of the enterprise, the capital by which it was conducted is gone at once. This could not happen if credit created capital; but it is perfectly accounted for when it is understood that capital, however it may be circulated and made accessible by credit, in order to be applied to any new object must have been withdrawn from another, to which it is liable to revert. As one of the forms in which capital is distributed, a system of credit is of the highest value; but if relied on as an independent equivalent of capital, it is delusive or fraudulent. [MONEY.]

As yet that description of credit which consists in defined payments for goods has only been generally adverted to; but we cannot close this article without a special notice of its peculiar character and effects. This system of credit is generally resorted to by tradesmen to increase their business; and it is undeniable that deferred payments offer a strong temptation to purchase. We are always eager to possess, and the cost of possession appears small in remote perspective. When a customer buys an article for which he is not to pay for twelve months, he becomes indebted for its value, and he has also, in fact, borrowed that amount of the tradesman, to whom he must ultimately repay—1st, the cost price of the article; 2ndly, the profit upon the sale; and, 3rdly, the year's interest upon the amount advanced. The tradesman, if he have capital, and can rely upon ultimate payment, is very glad to encourage purchases, and not only to sell his goods, but to charge a high rate of interest for deferred payments. If he have not a sufficient capital, he must borrow money from others to enable him to give credit; and, of course, he will charge to his customers a higher interest than he has paid himself. In either case he runs considerable risk, for the debts contracted in this manner are devoid of all security. The goods are supplied and consumed; and if the parties fail in payment, there can be no restitution or compensation. When the system is fully established, many persons avail themselves of it dishonestly; others are improvident, and without intentional fraud, exceed their means, and become insolvent; and various accidental circumstances may prevent the tradesman from recovering his debts. His risk, therefore, is exceedingly great; and in charging interest for his loans, he must cover all his losses. He consequently charges not only a reasonable interest for the risk which he runs in each case, but also an insurance against all the losses which he may incur in his business. Thus a customer pays the price of his own purchases, a high rate of interest for his loans, and a portion of the unpaid debts of other people. Nor can any check be placed upon the creditor, as in other forms of credit. No specific sum is advanced with a stipulated interest; but a gross amount is due, in which the rate of interest is concealed. It may be exorbitant, and out of all proportion to the value of the article supplied, and the accommodation given; but it is not separable from the delusive price. This circumstance is an obvious encouragement to fraud; and it has a tendency to raise prices injuriously to the consumer; an evil which even extends itself, in a great measure, to purchases paid for in ready money.

It is the abuse, however, or the exces-

sive use of this form of credit, which is mischievous. If properly used, and within reasonable limits, it is as useful as credit in any other form. A few examples will suffice to illustrate this position. The receipts of different consumers are irregular; their consumption constant. Within the year their receipts and expenditure may be about the same; but in point of time, they cannot be accurately balanced and adjusted one to the other. This system of credit enables them to provide for themselves and their families without privation, and at the cost of no one else. By an operation scarcely perceptible, their receipts and expenses are adjusted. If, instead of satisfying their wants, they had suffered privation, trade would have been injured and capital employed less fully. Again, a man who pays for everything he consumes a year hence practically adds to his capital a sum equal to the value of his consumption. He gains a whole year of productive industry in advance of his own subsistence. It is true that he will ultimately have to pay for it, together with a high interest; but if he has been able, in the meantime, to apply this additional capital so productively as to leave a balance in his favour, he has enriched himself and the community. The tradesmen who have trusted him, and the capitalists by whom they have been aided, will have made a profit upon his consumption, and have realized the interest upon their loans; while he will have given more employment to capital and to labour than he would have been able to give if he had been compelled to pay for his own subsistence from day to day.

In various other ways credit, in this form, is a valuable auxiliary to capital and industry; but whenever it is injudiciously given or accepted it becomes injurious. In this respect it does not differ from other forms of credit. The precise uses of credit in general have been already explained. In whatever form it is judiciously and honestly applied it is an efficient agent in the circulation and productive use of capital; but whenever it is used without judgment or fraudulently abused, it becomes injurious, and wastes capital instead of encouraging its growth. All great means conducive to social good are, unhappily, liable to perversion and abuse. The public credit of nations and mercantile credit have too often been abused, as recently, in the most signal manner, by the Americans; and the system of tradesmen's credit has also been shamefully perverted; but all alike are conditions inseparable from the application of capital to the infinite purposes for which it is required. The advantages of credit are so great that it will always be extensively used in every form of which it is susceptible; but its evils may be mitigated by the judgment and experience of capitalists, and by improved laws for adjusting the relations between debtor and creditor. [DEBTOR AND CREDITOR; NATIONAL DEBT.]

CREDIT, LETTER OF, is an order given by bankers or others at one place, to enable a person to receive money from their agents at another place. The person who obtains a Letter of Credit may proceed to a particular place, and need only to carry with him a sum sufficient to defray his expenses; and it gives him some of the advantages of a banking account when he reaches his destination, as he may avail himself of it only for part of the sum named in it. If it were not for the convenience which a Letter of Credit affords, a person who was intending to make a tour on the Continent, for example, would be under the necessity either of taking with him the whole of the sum which he would require during his absence, or of receiving remittances from home, addressed to him at particular places.

A Letter of Credit is not transferable. By a strict interpretation of a clause in the Stamp Act (55 Geo. III. c. 184), an instrument of this nature would seem to be liable to the same duty as on a bill of exchange payable to bearer or order; but in practice the duty is openly evaded. If the law were more stringently acted upon, evasion of the duty could be easily practised, as a banker, instead of granting a written instrument, could advise his agent privately to pay certain sums to certain parties, according as the agent might be advised.

CRIME AND PUNISHMENT. [TRANSPORTATION.]

CRIMINAL CONVERSATION. [ADULTERY.]

CRIMINAL LAW. [LAW, CRIMINAL.]

CROWN SOLICITOR. In state prosecutions in England the solicitor to the treasury acts as solicitor for the crown in preparing the prosecution. In Ireland there are officers called crown solicitors attached to each circuit, whose duty it is to get up every case for the crown in criminal prosecutions. They are paid by salaries. There is no such system in England; where prosecutions are conducted by solicitors appointed by the parish or other persons bound over to prosecute by the magistrates on each committal; but in Scotland the still better plan exists of a crown prosecutor in every county, who prepares every criminal prosecution whatever.

CURATE, PERPETUAL. [BENEFICE, p. 343.]

CURA'TOR, from the Latin Cura, 'care.' Curators in ancient Rome were public officers of various kinds, particularly after the time of Augustus, who established several officers with this title. (Suet., *Augustus*, cap. 37.)

1. Curatores viarum, that is, curators who superintended the laying out and repairing of the public roads. This office existed under the Republic (Cicero, *Ad Attic.* i. 1), but it was only held as an extraordinary office, and was conferred only for special purposes.

2. Curatores operum publicorum, aquarum, cloacarum, who had the superintendence of the public buildings, theatres, bridges, aqueducts, and cloacæ.

3. Curatores alvei Tiberis, who were the conservators of the Tiber.

4. Curatores frumenti populo dividundi, whose duty was to distribute corn among the people. Under the emperors we find other officers with the name of curatores; as, for instance, the curatores ludorum, who had the superintendence of the public amusements: and curatores reipublicæ, also called logistæ, whose duty it was to administer the landed property of municipia.

Curator is also the name of a person who was appointed to protect persons in their dealings who were above the age of puberty and under the age of twenty-five years. On attaining the age of puberty, which was fourteen according to some authorities, a youth acquired full legal capacity, and he could act without the intervention of a tutor. But though he had thus attained full legal capacity, it was considered that he still required protection, and this was given him by a Lex Plætoria, the date of which is uncertain, but it is as old as the time of Plautus, who alludes to it The effect of this law was to divide all males into two classes, those above twenty-five years of age and those below, who were sometimes called minores or minors. The object of the law was to protect minors against fraud, for the minor, if he had been cheated in a contract, might plead the Lex Plætoria against an attempt to enforce it. Probably, also, a man who dealt with a minor might protect himself against any risk of the dealing being called in question, by requiring the minor to have a curator for the occasion. It would not be the business of the curator to assent to the contract of the minor, who had full legal capacity, but to prevent his being cheated. The prætorian edict extended the principle of the Lex Plætoria by setting aside all transactions by a minor which might be injurious to him; but it was necessary for the minor to apply to the prætor for redress during his minority, or within one year after he had attained his majority. The remedy that the prætor gave to the minor was the "in integrum restitutio," which means restoring the applicant to his former position by setting aside the contract or dealing.

Till the time of the Emperor Marcus Aurelius, it appears that a minor only had a curator on special occasions, as when he wished to make a contract. In this case he applied to the prætor, and stated the grounds on which he applied. The prætor then gave him a curator if he thought proper. We must suppose that the application would only be made when the matter was of some importance. The object of the application was the security of the person who dealt with the minor, and the benefit of the minor also; for a prudent person would not deal with him without such security. The Emperor

Aurelius established it as a general principle that all minors should have curators. The subject of the Roman curators is fully investigated by Savigny. (*Von dem Schutz der Minderjährigen, Zeitschrift für Geschichtliche Rechtswissenschaft*, x.)

If a man was wasting his property imprudently (prodigus), his next of kin (agnati) were his curators; and the same was the rule as to a man who was out of his mind (furiosus). The law of the Twelve Tables fixed this rule; and in cases to which the law of the Twelve Tables did not apply, the prætor named a curator or committee.

It may be just as well to warn people not to confound a Roman Curator with a Roman Tutor [TUTOR].

CURRENCY. [MONEY.]

CURSITOR BARON, an officer of the Court of Exchequer, is appointed by patent under the great seal to be one of the barons of the Exchequer. He attends at Westminster to open the court prior to the commencement of each of the four terms, and on the seal day after each term to close the court. He administers the oaths to all high-sheriffs and under-sheriffs who are sworn by the court, and to several officers of revenue. Prior to 1833 he had various other duties to perform; but since the passing of the act 3 & 4 Will. IV. c. 99, much of the business of his office has entirely ceased; and the commissioners appointed under the 1 Will. IV. c. 58, in reporting on the consolidation of the offices in the Courts of Queen's Bench and Common Pleas, recommended the abolition of the office of cursitor baron. This recommendation however has not been carried into effect. (*Report of Commissioners on offices of Courts of Justice*, 1822; *Parl. Paper*, No. 125; *Parl. Paper*, 1835, No. 314.)

CUSTOMARY FREEHOLD. [COPYHOLD.]

CUSTOMS, or USAGES (consuetudines), are either general or local. The first kind consist of those usages which have prevailed throughout England from time immemorial: their origin is unknown, but having been recognized by judicial decision,* they form that common law, or lex non scripta, which is the foundation of English Law. To like immemorial usage is to be ascribed the existence of such parts of the Roman and canon laws, as from the earliest times have formed the rule in the king's ecclesiastical, military, and admiralty tribunals, and also in the courts of the two English universities. These laws of foreign origin subsist however only as inferior branches of the customary law, subject to control by the superior temporal courts, and to a strict adherence to the rules of construction observed by these courts in the interpretation of statute law.

These general customs of the realm, which form the common law, properly so called, alone warrant the existence and jurisdiction of the king's superior courts; and can only be drawn into question there. These general customs, as originally methodized by the Saxon kings, and in some cases modified in the early Norman reigns, supplied those fundamental rules by which, in cases not otherwise regulated by statute, the law of inheritance, the interpretation of acts of parliament, and most of the remedies for civil and criminal injuries are regulated. Numerous axioms essential to the administration of justice have no other binding force than antient and uninterrupted usage, which has obtained the force of law by the recognition of the courts. [COMMON LAW.]

Among these general customs are those rules which prevail among the particular bodies of men to which they relate; merchants, innkeepers, carriers, owners of lands adjoining the sea-coast, &c. &c., as well as the inhabitants of particular counties or boroughs, in the particular instances of gavelkind and Borough Eng-

* Bracton's definition of a custom is this—'Consuetudo vero quandoque pro lege observatur, in partibus ubi fuerit more utentium approbata, et vicem legis obtinet, longævi enim temporis usus et consuetudinis non est vilis authoritas.' (Bracton, fol. ii., ed. Lond. 1569.) This is no inapt definition of a custom observed as if it were law, by those who find it convenient and reasonable; but we can hardly conclude from this passage that this excellent old writer clearly saw that custom could not be law till made so by the sovereign power, or those to whom the sovereign power has delegated parts of its authority.

lish. That custom called the law of the road, by which riders and drivers are expected to keep the left hand, as well as that respecting servants hired at yearly wages, by which either master or servant may determine the contract at a month's warning, or on paying a month's wages, have been recognized by the courts from time to time as parts of the common law. These, like the rest, originated in general convenience, and being gradually drawn more into notice by frequent recurrence, have been finally sanctioned by judicial authority. For the principle of immemorial customs may be extended to things and circumstances which arise at the present times. Thus a custom from time immemorial that all officers of a court of justice shall be exempt from serving other offices includes offices created within the time of legal memory, but cannot be enlarged beyond the extent to which the use has been carried; for that, and not the reason of the thing, determines the courts in declaring what the law is in such cases. Yet, though the judges in such a case as this declare the law to be what they do declare it, they do in fact make a new rule of law; they legislate by analogy to the rule that subsists.

The customs by which the king's superior courts of Westminster Hall regulate their administration of justice, are termed their practice. These rules are founded on antient usage, and, in respect of their universality, form a part of the common law without its being necessary to allege custom or prescription to warrant them.

Where a custom is already part of the common law, the superior courts take notice of its existence as such, without requiring it to be stated in the written pleadings. Thus each of these tribunals takes notice of its own customs or practice as well as of that the rest; whereas the practice of inferior courts, as well as local customs, extending to certain persons or districts only, being therefore different from and contrary to the common law, must, with the exception of gavelkind and Borough English, be set forth with due precision.

This, though an observation apparently technical only, forms in its application the test by which we distinguish general from the local or particular customs just described. Particular customs must have had their origin in the peculiar wants of their respective districts, and are the remains of that multitude of similar usages from which Alfred and his Saxon successors collected those laws which may be considered as forming the common law of the nation at the time.

Many of these customs, for reasons now forgotten, have remained in some counties, cities, and manors, in their former vigour, though at variance with the laws of the rest of the nation, and are confirmed by Magna Charta and other acts of parliament. Such are the customs of gavelkind (abolished in Wales by stat. Henry VIII.), by which all the sons inherit alike, of Borough English, by which lands held in burgage tenure descend to the youngest, instead of the eldest son; and of some boroughs, that widows shall have dower of all, instead of a third of their husbands' lands. A more striking instance is that custom in many cities and towns to hold courts for trial of causes without royal grant. The particular customs of manors as to descent were also of this kind, and bind the copyhold and customary tenants; but the law of descent is now made uniform. The existence of every such local custom, with the exceptions above noticed, as well as its application in each particular case, must be alleged in the pleadings, and proved, like any other fact, before a jury: sometimes they are open to evidence without being pleaded. Under no circumstances can these questions be entertained by an ecclesiastical court without the consent of the party who impugns the custom.

Such customs of London as do not concern the property of the corporate body itself are proved by a peculiar mode, that of a certificate to the superior courts of law from the lord mayor and aldermen, conveyed by the mouth of their recorder in a solemn ceremonial; without this certificate these courts will not take judicial notice of them.

A custom to be valid must have been used "from time whereof the memory of man runneth not to the contrary." This is "prescription," or "title by pre-

scription;" and more accurately describes what is commonly called "time immemorial," which means, says Littleton, "that no living witness hath heard any proof or had any knowledge to the contrary," and as Lord Coke adds, "that there is no proof by record or writing or otherwise to the contrary." It has been doubted whether a prescription (in its proper sense) and a custom can coexist. There is some curious learning on this point collected in the arguments and judgment in Blewett *v.* Tregoning, 3 Ad. and Ellis. It has been held that a custom in a particular market that every pound of butter sold in it should weigh 18 oz. was bad, being directly contrary to 13 & 14 Charles II. c. 26, which enacted that every pound avoirdupois throughout the kingdom should weigh 16 oz. only. The right to a particular custom must have been continued within time of memory peaceably and without lawful interruption, and will not be lost by mere disuse for ten or twenty years; though in such case it becomes more difficult to establish it by proof. But it cannot stand against an express act of parliament to the contrary, for that itself proves a time when the right to such a custom could not exist. It must also be so far reasonable, according to the standard warranted by authority of law, that though no particular origin can now be assigned for it, or though the state of things in which it is known to have arisen has been altered, no good legal reason can be given against its continuance. If it may have had a legal and reasonable origin, it shall be presumed that it actually had it; and its varying from the general law forms no objection, for that is the very essence of a particular custom: but if it be so contrary to any known rule or principle of law, or to the good of the public, or of a multitude of persons, that it cannot be presumed to have had a reasonable commencement in voluntary agreement for some beneficial object, as for securing possessions, promoting trade, or suppressing fraud, it will be void. Thus no length of usage would render good a custom of the secretary of state's office to issue warrants in general terms against the authors, printers, and publishers of a libel, without naming them; that course is contrary to clear and well-settled principles of law, which will not suffer a mere officer to decide on the individuals who are to be imprisoned. Again, a custom in an inferior court to try causes by six jurors was held bad, as contrary to the common law, though saved in Wales in some instances by a statute of Henry VIII., which confirmed such custom where it then existed. But long usage and acquiescence in one uniform payment, or in exempting persons particularly situated from contributing to it, are cogent evidence that it is reasonable; for, as Lord Mansfield once said, it cannot be presumed that during a long period of years one-half the parties were knaves in wrongfully receiving that to which they were not entitled, and the other fools for submitting to an unjust demand. It belongs to the judges of the courts to decide what is reasonable when the question arises in any matter that comes before the court.

Where a custom is harmless and affords recreation to a number of persons, though to the temporary inconvenience of an individual, it will be upheld and preferred to a legal origin. Thus a custom for the inhabitants of a parish to play at cricket, or dance, on private property in the parish, was held good, as the lord might have annexed this condition to his original grant of the land. A custom must also be certain as to the description of parties benefited, and compulsory, without its depending on the caprice of any third person whether it can be acted on or not. It must also be consistent; for repugnancy to any other local custom would be plainly contrary to that origin in common consent on which alone it stands: and lastly, it must be strictly pursued, being derogatory from the common law.

Local custom varies from prescription in this: local custom is alleged in legal forms as existing not in any person certain, but within a certain named district, without showing any legal cause or consideration for it; whereas prescription must have a presumed legal origin, and is either a personal right, always claimed in the name of a person certain and his ancestors, or those whose estate he has, or by a body politic and their predecessors,

or else is in a *que* estate; that is, a right attached to the ownership of a particular estate, and only exercisable by those who are seised of it. All customs of cities, towns, and boroughs, by which persons not freemen were prevented from keeping shops or using trades or handicrafts within them, were abolished by 5 & 6 Wm. IV. c. 76, § 14, except in the case of the customs of the city of London.

Customs of traders, or seamen, as also of agriculture, mining, and other branches of industry, will be followed in the construction of contracts, unless they are inconsistent with their express terms, and, subject to that condition, they are admissible even to annex incidents to them as to which they are silent. The "custom of the country" means the custom of all parts of the country to which it can in its nature be applied. Thus a custom that land accruing imperceptibly to the seashore belongs to the owners of the shore, applies to all such parts of the realm as adjoin the sea, unless limited in terms to a particular district.

The immemoriality of a particular local custom may be sufficiently proved by living witnesses who can attest its continued existence for twenty years, unless contradicted by contrary proof. Upon this doctrine will be found to depend a great variety of public as well as private rights to ancient offices, estrays, treasure trove, wreck, nomination of juries, &c.; as well as to tolls of markets, port duties, tithes, ancient rents, &c., and to exemptions from those burdens. The numerical amount of instances in which the privilege can be proved to have existed must be considerable or not according to the frequency or the rarity with which according to the nature of the case they may be expected to recur.

Reiterated facts of user make a custom of trade; but the mere opinion of merchants is not sufficient for that purpose; nor can any course of action pursued under colour of a custom of merchants alter a general rule of common law when established by judicial decisions.

A long continued usage for exempting particular persons from a local burden, will, if necessary, be supported by presuming that it originated in an act of parliament now lost, though no length of usage will avail against the terms of a statute to the contrary.

CUSTOMS-DUTIES consist for the most part of taxes levied upon goods and produce brought for consumption from foreign countries; such duties are sometimes collected upon exports made to foreign countries, and upon goods and produce passing from one port to another of the same country. Of this nature were the duties on coals, slate, and stone, carried coastwise from one port in the United Kingdom to another, which duties were repealed in 1831. Since the abolition of the export duty on coal in 1845, the only duties outwards consist of an *ad valorem* duty of one-half per cent. on the shipment of some articles of British production, and it will not produce so much as 1500*l.* a year.

The earliest statute passed in this country whereby the crown was authorised to levy customs-duties, was the 3rd of Edward I. The mode long employed in the collection of these duties was to affix a certain rate or value upon each kind or article of merchandise, and to grant what was called a *subsidy* upon these rates. This subsidy was generally one shilling of duty for every twenty shillings of value assigned in the book of rates. The early acts which grant these duties speak of them as subsidies of tonnage and poundage. The word tonnage was applied to a specific duty charged on the importation of each tun of wine and the exportation of each tun of beer; and the word poundage was applied to other articles valued as already explained.

The first "book of rates agreed upon by the House of Commons," is believed to be that compiled by a committee in 1642, during the reign of Charles I., and published under the authority of the House by Lawrence Blaiklock. The next book of rates of which we have any record was also published by order of the House of Commons in 1660, the year of the restoration of Charles II. In the fifteenth and twenty-second years of the reign of that king, the principle of poundage was altered as respected some articles, and upon those articles specific duties were charged instead, though the system was

still followed with regard to the great bulk of articles. But in the reigns of William III. and Anne many additional specific rates were imposed, in place of the valuation for the subsidy. This course of substitution was continued from time to time, and some other innovations were adopted, by which the simplicity of the ancient plan was destroyed; so that in a work of authority, published by Mr. Henry Saxby, of the Custom-House, London, in 1757, we find as many as thirty-nine principal branches of customs-duties, with subdivisions applying to different kinds of goods, whereby a degree of complication was introduced into the subject which must have caused great embarrassment to traders.

The difficulties here mentioned were increased by the great number of acts of parliament passed from year to year for altering the duties or regulations of this branch of the revenue; and the great bulk and intricacy of the customs-laws had caused such inconvenience that about the year 1810 the lords of the Treasury employed Mr. Jickling to prepare a digest of those laws. Five years were employed in completing this task, and some idea may be formed of the laborious nature of the work, and of the necessity for its performance, from the fact that the digest forms a large octavo volume of 1375 pages. The work is entitled 'A Digest of the Laws of the Customs, comprising a Summary of the Statutes in force from the earliest period to the 53rd George III. inclusive.' The effect of numerous fresh enactments to impair the usefulness of this exposition of the revenue laws was very soon apparent, and in 1823 Mr. Hume, the secretary of the Board of Trade, then comptroller of the Customs in the port of London, was appointed by the Treasury "to undertake the preparation of a general law or set of laws for the consolidation of the Customs of the United Kingdom." In the performance of this duty, Mr. Hume prepared eleven bills, which received the royal assent in July, 1825, and came into operation 1st of January, 1826. These acts were 6 Geo. IV. caps. 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116. The first of these acts repealed 443 statutes, many of which were obsolete. In 1833 eight of Mr. Hume's acts were repealed or altered by 3 & 4 Wm. IV. caps. 50, 51, 52, 53, 54, 55, 56, 57. These acts no doubt effected great improvements in the management of the Customs, but cap. 56 enumerated no fewer than 1150 different rates of duty chargeable on imported articles, all other articles paying duty as "unenumerated." In 1840 Mr. Porter, of the Board of Trade, in his evidence before the Parliamentary committee on import duties, showed that out of a total amount of 22,962,610*l.* of Customs-duties received in 1839,

17 articles produced 94½ per cent. or . .	£21,700,630
29 articles produced 3$\frac{9}{10}$ per cent. or . . .	898,661
46 articles produced 98$\frac{2}{5}$ per cent. or . .	£22,599,291

In 1842 Sir Robert Peel effected some improvements in this system, which were carried into effect by 5 & 6 Vict. c. 47. This act reduced the duty on about 750 different articles on which the receipts had amounted to about 270,000*l.* The general principle of the measure was to reduce the duty on raw materials to about 5 per cent., to limit the highest duty on partially manufactured materials to 12 per cent., and on complete manufactures to about 20 per cent. The number of articles in the tariff was now reduced to 813. Foreign horned cattle, sheep, goats, swine, salmon, soles, and other fish, and fresh beef and pork, which had been prohibited formerly, were admitted on paying a duty under the tariff of 1842. In 1844 the duty on foreign wool was abolished. In 1845 Sir Robert Peel effected further improvements in the tariff by abolishing the duty on cotton wool (about 680,000*l.*) and on 430 other articles, on which the duty amounted to 320,000*l.* By this plan expenses of warehousing are saved [WAREHOUSING SYSTEM], and a number of troublesome accounts and impediments to business are got rid of; but for statistical purposes the Customs department retains the power of examining articles which do not pay

duty. The paramount object of the tariff reform of 1845 was to encourage the abundance and cheapness of raw materials of manufacture.

The following is an abstract from an official 'Expository Statement,' showing the net annual produce of the duties of Customs on all articles imported into the United Kingdom in two years preceding and in two years following the establishment of the new tariff (5 & 6 Vict. c. 47).

Articles producing under the New Tariff.	Old Tariff.	New Tariff.
	£	£
Under 100*l.*	19,037	8,040
£100 to 500	71,972	34,461
500 to 1,000	69,032	36,258
1,000 to 10,000	570,718	317,492
10,000 to 50,000	706,991	511,570
50,000 to 100,000	389,006	395,603
100,000 & upwards	20,810,542	21,417,462
Exempt from duty or prohibited .	196	"
	22,637,494	22,720,886

On 598 articles, the duties on which were altered in 1842, 1843, and 1844, the receipts were 3,851,259*l.* in 1840 and 1841, and 2,478,306*l.* in 1843 and 1844.

On 214 articles, the duties on which were not altered in 1842, 1843, and 1844, the receipts were 18,114,525*l.* in 1840 and 1841, and 19,094,890*l.* in 1843 and 1844.

In 1844 the gross receipt on the following five articles was 15,728,857*l.* :—

Sugar	£4,758,415
Tea	3,884,726
Tobacco . . .	3,093,217
Foreign Spirits .	2,193,067
Wine	1,799,430

The net amount of duties collected in the United Kingdom on imported articles, after the deduction of drawbacks, repayments, &c. in the several years from 1828 to 1844, both inclusive, was as follows:—

		On Corn (included in the preceding column).
	£	£
1828 . .	21,691,613	193,251
1829 . .	21,359,802	898,794
1830 . .	21,622,683	790,110
1831 . .	21,272,263	544,792
1832 . .	21,714,524	307,988
1833 . .	20,892,902	35,342
1834 . .	21,282,080	97,987
1835 . .	21,873,814	234,576
1836 . .	22,758,369	149,662
1837 . .	21,849,109	583,271
1838 . .	22,121,038	186,759
1839 . .	22,958,254	1,098,849
1840 . .	23,153,958	1,156,660
1841 . .	23,302,152	568,341
1842 . .	22,356,324	1,363,978
1843 . .	22,450,074	758,295
1844 . .	23,864,494	1,098,383

The following table shows the nature of the tariff previous to the alterations in 1845:—

Articles each producing in 1843-44,	Articles in a raw state for Manufactures.	Articles partially manufactured.	Articles wholly manufactured.	Articles of Food.	Not comprehended under the preceding heads.	Total.
	No.	No.	No.	No.	No.	No.
Under £100	144	54	113	46	91	448
£100 to 500	45	19	31	15	27	137
500 to 1,000	16	5	17	6	6	50
1,000 to 10,000	28	11	27	28	15	109
10,000 to 50,000	6	5	5	7	2	25
50,000 to 100,000	2	—	—	3	—	5
100,000 and upwards. . . .	3	1	1	12	—	17
Exempted from duty or prohibited	8	—	2	4	8	22
Total.	252	95	196	121	149	813

The charges of collection on the gross receipt of Customs-duties (24,277,477*l.*) for the United Kingdom were 1,264,996*l.* in 1844, or 5*l.* 4*s.* 2½*d.* per cent. On a

gross receipt of 2,358,543*l.* for Ireland the charges of collection were 215,223*l.*, or 9*l.* 2*s.* 6*d.* per cent., or nearly double the per centage for Great Britain. The great heads of expenditure of the Customs establishment are—797,910*l.* civil department; preventive water-guard, 345,226*l.*; cruisers, 97,401*l.*; land-guard 19,058*l.* The sum of 797,910*l.* for the civil department consists of 429,147*l.* salaries and allowances; 128,201*l.*, day-pay; 121,017*l.*, superannuation allowances; 16,711*l.* for compensation and allowances for offices and fees abolished; 17,789*l.* law charges; special services and travelling charges, 19,208*l.*, besides some other heads under which the disbursements were of smaller amount. Besides the actual charges of collection, the Customs revenue is charged with the following payments:—Quarantine and warehousing establishments, &c., 148,070*l.*; payments in support of the civil government of Scotland, 108,640*l.*; compensation to naval officers in the coast-guard, &c., and to officers of the late tax-department in Ireland, 44,139*l.*; payments on account of the difference of Trinity light and pilotage dues between British and foreign vessels, and on account of compensation to the South Sea Guarantee Fund, 14,220*l.*; and some other sums, making a total of 315,624*l.*

The management of the revenue of Customs is committed to a board of nine commissioners, acting as a subordinate department of the Treasury. The commissioners receive a salary of 1200*l.*: the chairman receives 800*l.* in addition, and the deputy-chairman 500*l.* In 1845 two of the commissioners were young men of twenty-six years of age. The total number of persons in the Customs establishment of the port of London in 1844 was 1881, and the total expense thereof was 259,632*l.*

Nearly one-half of the Customs revenue of the United Kingdom is collected in the port of London, and about one-fifth of the whole in the port of Liverpool. In 1843 the amounts collected at five principal ports was as under:—

London . . .	£11,354,702
Liverpool . . .	4,121,522
Bristol . . .	£996,750
Dublin . . .	977,890
Hull	525,418

CUSTOS BRE'VIUM. Officers so called existed until lately both in the Court of Queen's Bench and the Court of Common Pleas. They received and had the custody of all the writs returnable in their respective courts, filed warrants of attorney, and various other documents connected with the business of the courts. By virtue of the act 1 Will. IV. c. 58, these offices (of which the duties were performed by deputy) were abolished in both courts, and compensation granted to their possessors. The office in the Court of Queen's Bench was held by Lords Kenyon and Ellenborough jointly, and the compensation granted them was 2089*l.* 17*s.* 4*d.* per annum. In the Court of Common Pleas the compensation granted to the custos brevium was 606*l.* 10*s.* 6*d.* per annum. (*Parl. Papers*, 1835, No. 314; 1844, No. 413.)

CUSTOS ROTULO'RUM is the chief civil officer of the county, to whose custody are committed the records or rolls of the sessions. He is always a justice of the peace and *quorum* in the county for which he is appointed. The lord-lieutenant has the chief military command of the county, and his office is quite distinct from that of custos rotulorum; but it is the invariable practice to appoint the same person to both offices, in whom is united the highest military and civil authority within the county. By statute 37 Hen. VIII. c. 1, and 1 Wm. III. c. 21, he is appointed under the queen's sign manual. As he has the custody of the rolls of the sessions, he should attend there in person or by deputy; and this duty is performed by the clerk of the peace as his deputy. [CLERK OF THE PEACE.] (Blackstone's *Comm.*; Burn's *Justice of the Peace*; Dickinson, *Guide to Quarter Sessions.*)

D.

DAMAGES, for which the Law Latin uses the word Damna, signifies a compensation in money which a man gets by the verdict of a jury for some wrong

that he has sustained. The damages in any action in which compensation for a wrong may be got are assessed by a jury, and when judgment is given, the plaintiff is entitled to get these damages from the defendant.

The plural word "damages" in this sense appears to be a technical use of the word "damage," damnum in the Law Latin, which means the loss that one man sustains by the act of another. The loss may be either a loss that affects his property or it may arise from an act which affects only his person, as assault, and imprisonment. There is a legal maxim that a man cannot recover damages when there is a "damnum absque injuria," a loss without an injury, that is, when one person sustains a loss by the act of another, but the act is not an illegal act. The word "injury" is here used in the proper sense of the Latin word "injuria," from which it comes: "injuria" signifies that which is "non jure factum," or done contrary to law. Damages then may be got when the act which causes the damage is an "injury" or "legal wrong," but not otherwise, however great may be the loss caused by the act of another. If one comes and sets up a shop by the side of another and takes away all his custom, he has caused him loss enough, but the sufferer can have no compensation, for it is legal for a man to set up a shop, even if he thereby ruins all other shopkeepers.

The kind of acts which are considered injuries is fixed by law; but sometimes cases arise in which it is difficult to determine how far the act which causes loss is an act which is permitted, or should be permitted, for the administrators of the law sometimes determine what shall be law by an appeal to what should be.

The word "damnum," damage, is used in the Roman Law. There might be "damnum sine injuriâ facientis," which was called Pauperies, a term which signified some damage caused by a quadruped, for which the owner was liable. The word "injuria" implied that the doer must be a rational agent; and therefore in the case of an animal, the mischief was said to be done without "injuria." When the loss or damage was caused by the act of a human being, it was "damnum injuria." (*Dig.* 9, tit. 1 and 2.)

A man may receive great loss from the wrongful act of another, and have no compensation by the law of England. He may have damages for loss to his property caused by an illegal act; and he may have compensation in some cases for damage to his body caused by the wrongful act of another. But as wrongs in the English law are distributed into private and public, and private wrongs are called civil injuries, and public wrongs are called crimes and misdemeanors, so there is a private, that is, an individual compensation in case of a private wrong, and a public compensation (if we may use the term) in the case of a public wrong. A man cannot recover compensation in respect of being robbed, for robbery is a public wrong, and the punishment that is inflicted is not inflicted with a view to compensate the injured person. A man may recover compensation if he is beaten by another, when the case is an assault; but if he should be half killed by a man who intended to kill him outright, this is a public wrong, and the sufferer gets no private compensation. Thus, says Blackstone, "Robbery is an injury to private property, but were that all, a civil satisfaction in damages might atone for it: the *public* mischief is the thing for the prevention of which our laws make it a capital offence. In these gross and atrocious injuries the private wrong is swallowed up in the public: we seldom hear of any mention made of satisfaction to the individual; the satisfaction to the community being so very great." It seems that the amount of satisfaction to the community, that is, to all the members of the state, is so great that the individual who sustains the loss may be well satisfied to go without anything except his share of the public satisfaction.

The extension of the principle of recovering damages, that is, pecuniary compensation, to other cases than those in which they may now be had, is a subject that deserves the attention of legal reformers.

Blackstone (iv. c. 1) has stated generally the cases in which a man may get damages and may not: but, as usual, he is

not satisfied with stating the law; he will give a foolish and insufficient reason to show that it is good.

DAMNUM. [DAMAGES.]

DEACON, an ecclesiastical term of Greek origin, from Διάκονος (Diáconus, literally, *a servant*), introduced into the Saxon vocabulary, and continued in use to the present time.

It designates one of the *orders* in the Christian priesthood, the lowest of the three—bishops, priests, and deacons.

The first institution of the order is particularly set forth in the sixth chapter of the Book of Acts. The administration of charities in the Church of Jerusalem was complained of as partial by the Grecian converts. The apostles, in whom the administration had been vested, thought it expedient to divest themselves of this duty, and to devolve it on other persons, that they might devote themselves to prayer and to the ministry of the word. Seven persons were selected for the office, and by prayer and the imposition of hands ordained deacons.

It appears by the First Epistle of St. Paul to Timothy, that there were deacons in other Christian churches, and probably in all where such an officer was needed. He gives instructions (chap. iii. 8-13) respecting the character which became persons who should be admitted into the office. See also *Phil.* i. 1. There were also deaconesses in the primitive church, one of whom, Phœbe, is mentioned, *Rom.* xvi. 1. This female officer may be traced to the eleventh or twelfth century.

The peculiar office of both deacons and deaconesses was to attend to works of mercy, to be the administrators of the alms of the more opulent members of the church.

In the English church the name continues, and the peculiar form of ordination, but the peculiar duties of the office seem to be lost sight of. In fact the Poor Laws, by creating certain civil officers whose duty it is to attend to the poor, have perhaps rendered the services of the deacon in this his characteristic capacity less necessary.

In some dissenting communities there are deacons who still discharge the duties for which the office was instituted: they collect the alms of the people at the sacrament, and distribute them among the poor. But they are always laymen, or persons who have not gone through the forms, generally few and slight, of ordination as practised among the dissenters.

There is a form for the ordination of deacons in the English church: some clergymen never take priests' orders. It appears by the Rubric that a person in deacon's orders is empowered to read publicly the Scriptures and homilies, to catechise, to preach when licensed to do so by the bishop, and to assist a priest in divine service, and especially in the communion. When contemplated in the light in which this form places him, he appears as an assistant to a priest, for he is to seek out the sick and poor, and report them to the priest, and in the absence of the priest to baptize. This latter permission has led to the introduction of the performance of other ecclesiastical duties, namely, the celebration of matrimony and the burial of the dead. In fact the deacon performs all the ordinary offices of the Christian priesthood, except consecrating the elements at the administration of the Lord's Supper and pronouncing the absolution.

A person may be ordained deacon at twenty-three. He may then become a chaplain in a private family; he may be a curate to a beneficed clergyman, or lecturer in a parish church, but he cannot hold any benefice, or take any ecclesiastical promotion. For this it is requisite that he take priest's orders.

DEADWEIGHT. [NATIONAL DEBT.]

DEAN (French *Doyen*, and in Latin *Decanus*), a word which, at first sight, would appear to be allied to DEACON, but which has probably a different origin. Etymologists seem not to be agreed concerning the origin of the word; but the most usual origin assigned to it is the word *decem*, ten, as if a dean were a person who presided over collective bodies of men or things, in number *ten*. The word *Dean* is generally used as an ecclesiastical term. The French word Doyen is applied both to ecclesiastical and lay personages. Richelet (*Dict.*, art. *Doien*)

says, that when applied to other than ecclesiastical bodies, it signifies the oldest of the body; thus the French used to speak of the Doien des Conseillers du Parlement. The Italian word *Decano* also signifies the head of a lay corporation, as well as an ecclesiastical dignitary. In Scotland it is used for the head of lay communities, but in England we believe it is generally confined to promotions or presidencies spiritual. It is, however, used in some colleges, as in University College, London, to signify the chief or head of a faculty chosen for a limited period. Deans in the Colleges of Oxford and Cambridge are persons appointed to superintend the religious service in the College chapels, to enforce the attendance of the students there, and to exercise some control over them in other respects.

In England there are three classes of ecclesiastical presidencies to which the title Dean belongs.

1. *Deans rural.* The dioceses are divided into archdeaconries, and the archdeaconries into deaneries, below which there is no other subdivision till we come to parishes, the minutest of the proper ecclesiastical divisions of the country. The whole country is thus divided, with the exception of certain districts of no great extent, which claim to be exempt jurisdictions.

Those who contend for the derivation of the word dean, whence deanery, from decem, suppose that originally there were *ten* churches or parishes forming each of these deaneries. This is a very obscure point, and it is equally uncertain at what time this distribution of the dioceses was made. It appears, however, that there were deaneries before the Norman Conquest.

In each of these deaneries there was a clergyman who was dean; he was usually a beneficed clergyman within the deanery. His duties were to exercise a superintendency over the clergy, to preside at their assemblies, and to be the medium of their communication with their spiritual superiors. He had his public seal. He appears also to have discharged those duties which are now performed by clergymen called surrogates.

By degrees this office in the English church fell into disuse. The history or the reason of its decline is not very well known, for the advantage of having such an officer, especially where the archdeaconries were extensive, must have been always evident. The office, however, did by degrees disappear in one diocese after another, till it became totally lost. There was a dean of Chalke, in the diocese of Salisbury, as late as the reign of Charles the Second; and a dean of Doncaster, in the diocese of York, in the reigns of George the First and Second.

Attempts have been made to revive it. Berkeley, bishop of Cloyne, tried to establish the office again in Ireland; and soon after the late Dr. Burgess was made bishop of Salisbury, he did actually revive the office in that diocese, appointing Mr. Dansey, the rector of Donhead St. Andrew, rural Dean of Chalke: this was in 1825. The Report of the Ecclesiastical Commissioners, 1835, under the head Territory, recommends that each parish shall be assigned to a deanery, and each deanery to an archdeaconry. There is a work, in two volumes quarto, entitled 'Horæ Decanicæ Rurales,' which is an attempt to illustrate by a series of notes and extracts, the name and title, the origin, appointment, and functions, personal and capitular, of Rural Deans, by William Dansey, &c. 1835.

The office existed in other parts of Christendom.

2. *Dean in a Cathedral Church.* The canons who formed the bishop's council were presided over by a dean; this has been the case from the remotest times. [CANON.] *Decanus et Capitulum* is the form in which all the acts of such communities run.

Anciently the deans were elected by the chapters; but here, as in other points, the royal power has encroached on the privileges of the church. Now the form is for the crown to issue a *congé d'elire*, naming the person whom the chapter is to choose, in the bishoprics of ancient foundation; but in the bishoprics founded by Henry the Eighth, the king names the dean by his letters patent merely. In the former case the bishop is called in to confirm the election, and he issues his mandate for the installation of the person

elected. In the bishoprics of St. David's and Llandaff the office of bishop and dean is united in the same person.

3. *Deans in Peculiars.*—There are in England certain ecclesiastical promotions, in which the person holding them is called by the name of dean, and they seem to have all had anciently, as some of them have now, capitular bodies connected with them, and in all there is something peculiar in reference to their spiritual superiors, and in the jurisdiction exercised by them. The principal of them are—the dean of Westminster; the dean of the chapel of St. George, of Windsor; the dean of Christ Church, Oxford; the dean of the Arches; the dean of the King's Chapel; the dean of Battel; the dean of Bocking; the dean of Middleham, &c. If the history of these foundations were traced to their origin, it would be seen that they were ecclesiastical establishments, mostly of royal foundation, possessing peculiar privileges and a peculiar jurisdiction, which escaped dissolution when the framework of the ecclesiastical institutions of England underwent some alteration at the time of the Reformation. There are also *Honorary Deans*, as the dean of the Chapel Royal of St. James's Palace. The Bishop of London is dean of the province of Canterbury, and the Archbishop of Canterbury sends to him his mandate for summoning the bishops of his province in Convocation.

DEBENTURE (Latin, *debentur*, from *debeo*, to owe), formerly written debentur, is a kind of certificate used at the Custom-house, which entitles a merchant who exports goods upon which a drawback or bounty is allowed to receive payment. Goods on which drawback or bounty is allowed are called Debenture goods (3 & 4 Wm. IV. c. 58, §§ 86, 87, 88, &c.). The forging of a Custom-house debenture is simple felony (41 Geo. III. c. 75, § 7). The 7 & 8 Geo. IV. c. 29, § 5, makes it felony to steal any debenture or other security for money.

The word has been used in some acts of parliament to denote a bond or bill, by which the government is charged to pay a creditor or his assigns the money due on auditing his account. Debentures were used to secure the arrears of pay to the soldiery during the Commonwealth, and are mentioned in the Act of Oblivion, 12 Car. II. c. 8. They are in use now in the receipt of Exchequer and Board of Ordnance, and, it is believed, in the king's household. (Cowel's *Interpreter.*)

Debentures are often issued by various associated bodies.

DEBT. [INSOLVENT.]

DEBT, NATIONAL. [NATIONAL DEBT.]

DEBTOR AND CREDITOR. [INSOLVENT.]

DECLARATION. [OATH.]

DECLARATION OF RIGHT. [BILL OF RIGHTS.]

DECREE, DECRETAL. [CANON LAW, p. 445; CATHOLIC CHURCH, p. 459.]

DECREE [EQUITY.]

DEED, an instrument in writing or print, upon paper or parchment, comprehending the terms of an agreement between parties able to contract, duly sealed and delivered. The name for a deed in the Law French of Littleton and others is *fait*, that is, *factum*, a thing done; of which *deed* is the translation. Deeds are of two kinds, indented and poll: a deed indented is called an indenture, and has a waving line cut teeth-fashion on one of the edges of the material upon which it is written, usually the top edge; and when the deed consists of more sheets than one, on the first sheet only. The term indenture implies that the deed is of two parts, that is, two parts or copies exactly alike, and that the two parts were divided by the line in order to afford additional means of authentication; but, except in the cases of leases, marriage settlements, partnership deeds, and some few others, there are seldom more parts than one. The expense of stamps on deeds is so heavy, that frequently, where two or more parties are equally interested in a deed, it is deposited with some person for their joint use. Hence the term indenture, in common acceptation, now implies little more than that the deed is made by and between two or more parties. Anciently some word, as for instance "chirographum" (whence "chirograph"), was written in capital letters upon the

part where the parchment or paper was to be divided, and afterwards cut in an indented or, in some cases, a straight line.

A deed poll is cut even, or polled at the edges, and is usually of one part only, that is, the deed of one party, or of several parties of the same part. The form commences in the mode of a declaration, "Know all men by these presents, that," &c.: the form appropriated to an indenture or a deed among several parties is "This indenture, made, &c. between, (here the parties to the deed are named), &c. Witnesseth," &c. A deed between several persons is not necessarily indented, except in those cases where an indenture is required by statute, and except in the working of what is called an estoppel. The indenting is not essential, even though the instrument should commence "This indenture," &c. It has been said that the indenting may be supplied after the deed is executed, and even in court; but in all cases where the indenting is essential to the validity of the deed, it seems clear that this must be a mistake. Since the passing of the act 7 & 8 Vict. c. 76, § 11, entitled 'An Act to simplify the Transfer of Property,' it is not necessary to indent a deed.

A deed, to be absolute and irrevocable, must be founded on a valuable or good consideration, untainted by anything immoral, illegal, or fraudulent, though a gift or voluntary conveyance will be effectual as between the parties, and is only liable to be questioned in certain cases by creditors or subsequent purchasers; and a voluntary deed may become irrevocable by a subsequent sale by the grantee of the subject-matter conveyed by it. [CONSIDERATION.]

Ancient deeds were short, and suited to the simplicity of the times. When transactions became more complicated, it was customary to divide deeds into several formal parts; but it is not necessary that a deed should be so divided: it may be a good deed, if there are sufficient words to show the meaning and intention of the parties to it.

Previous to its execution, the deed should be read, if any of the parties to the deed require it. The modern mode of executing deeds is by signing, sealing, and delivery. Signing is not essential to the validity of a deed, though it is required as to less formal instruments by the Statute of Frauds, 29 Ch. II. c. 3; but sealing is absolutely necessary, which is the most ancient mode of authentication, and has been in use from the earliest times. At present the seal is no real security against fraud, for any impression upon wax or other substance employed is sufficient; indeed it is generally affixed by the stationer who engrosses the deed, and it is not even necessary that there should be a seal for each party; one is sufficient for all. In some of the American States the impression upon wax has been disused, and a flourish with the pen at the end of the name, or a circle of ink, or a scroll, is allowed to be a valid substitute for a seal. The last essential to the due execution of a deed is delivery, except in the case of a corporation, where sealing by the common seal has the effect of delivery. The usual manner of delivering a deed is for the executing party to say, "I deliver this as my act and deed;" but any less formal mode by which the party signifies his intention to deliver it will be effectual. The delivery means that the person whose deed (act) the instrument is to be, and who is to be bound by it, delivers it to the person who is to receive some benefit from this deed, or to some person acting for him, and thereby declares that the act is complete. All the parties whose deed (act) the instrument is to be, must deliver it as their deed. A deed may also be delivered as an escrow, *i. e.* to a third person to keep till something is done by the grantee: when the condition is performed, the deed becomes effectual. A deed takes effect from the delivery, and not from the date, and therefore if it has no date, or a date impossible, the delivery ascertains the time from which it is to take effect. Evidence is admissible also of delivery on a day different from the date written. The execution is usually attested. Enrolment and registration are rendered necessary in some cases by statutory enactment, and the revenue laws have imposed certain stamps upon every description of deeds, the absence of which prevents them from being admissible in evidence.

After execution, a deed may become void by erasure, interlineation, or other alteration in any material part; but, generally speaking, such alterations will be presumed to have been made before the execution, if nothing appear to the contrary, or there be no cause to suspect that it has been done in a clandestine manner. A grantee may also disclaim the grant or disagree thereto; and a deed may be destroyed or cancelled, but such destruction or cancellation will not revest the thing granted in the grantor, though all personal engagements established by the deed between the parties will be put an end to. If the seal is broken from the deed, the covenants contained in it are void. If the deed has transferred property from one person to another, the property continues transferred, just as if the deed existed; but if the seal is any way destroyed, the covenants which are to be executed are destroyed, because when any legal proceeding is taken upon the deed, it must be pleaded as a deed, and it is not the deed of the party whose deed it professes to be, if that mark is destroyed which is the legal evidence of its being his deed. But as long as the seal is on a deed, and the deed exists entire, so long is the party, whose deed it is, bound by the covenants. In the case of a bond, which is a deed by which a man binds himself, his heirs, executors, and administrators, to pay a certain sum of money to another at a time named, length of time was formerly no legal bar to an action upon it; yet it was a ground for a jury presuming that it had been satisfied. But by the 3 & 4 Will. IV. c. 42, actions upon specialties, that is, founded upon instruments which are deeds, must be brought within twenty years after the cause of action has arisen.

The effect of the seal remaining is sometimes an unexpected surprise to a man. If a man has taken a lease for a term of years of premises, with covenants to repair, and at the expiration of the lease should agree with his landlord to become tenant from year to year, he should get the seal off the lease in the landlord's hands. If he does not, the landlord may still make him repair by virtue of the seal, if he brings his action within the time fixed by law, for the judges have decided that, though tenant from year to year, he is bound by the original covenants.

(Butler, n. Co. Litt. 295 *b.*; Shepherd, *Touchstone;* Dixon; Co. Litt.; Cruise's *Digest.*)

DEER-STEALING. [GAME LAWS.]

DEFAMATION. [SLANDER.]

DEGREE. [UNIVERSITY.]

DEL CREDERE COMMISSION. [AGENT.]

DELEGATES, COURT OF, was the great court of appeal in ecclesiastical causes, and from the decisions of the Admiralty Court. It was so called because the judges were delegated or appointed by the king's commission under the great seal; they usually consisted of judges of the courts at Westminster and doctors of the civil law, but lords spiritual and temporal might be joined. This court was established by the statute 25 Henry VIII. c. 19, which was passed in consequence of the practice of appealing to the pope at Rome from the decisions of the English courts in the above-mentioned matters.

Appeals lay to the court of delegates in three cases—1, where sentence was given in any ecclesiastical cause by the archbishop or his official; 2, where any sentence was given in an ecclesiastical cause in place exempt; 3, where sentence was given in the admiralty, in suits civil and marine, according to the course of the civil law. After sentence by the delegates, the king might grant a commission of review; but the power was rarely exercised, except upon the ground of error in fact or in law, and it was usual to refer the memorial praying for a commission of review to the chancellor, before whom the expediency of granting the prayer was argued.

By statute 2 & 3 William IV. c. 92, the Court of Delegates was abolished, and its powers and functions were transferred to the king in council, and by the same statute it is enacted that the decision of the king in council shall be final, and that no commission of review shall in future be granted. (Cowell's *Intrepreter;* Blackstone, *Com.*) [ADMIRALTY COURTS; ARCHES, COURT OF; PRIVY COUNCIL.]

DEMAND AND SUPPLY are terms used in political economy to express the relations between consumption and production—between the demand of purchasers and the supply of commodities by those who have them to sell. The relations between the demand for an article and its supply determine its price or exchangeable value [VALUE]: the relations between the demand for labour and its supply determine the amount of wages to be earned by the labourer [WAGES]. For causes explained elsewhere, the price of an article will rarely vary, for any length of time, very much above or below its cost of production;* nor will the wages of labour, for any length of time, much exceed or fall below the amount necessary to maintain labourers and their families in such comforts as their habits of life have accustomed them to believe necessary for their subsistence; but bearing in mind that, in the prices of commodities and labour, there is a certain point, determined by causes independent of demand or supply, above or below which prices cannot materially vary for any considerable time: all variations of price, if the medium in which they are calculated remains unchanged, may be referred to the proportion which exists between the demand for commodities and the supply of them—between the quantities which purchasers are willing and able to buy, and the quantities which producers are able and willing to sell.

To have any influence upon prices a demand must be accompanied by the means of purchasing. A demand is not simply a want—a desire to obtain and enjoy the products of other men's labour; for if this were its meaning, there would never be the least proportion between demand and supply: all men would always want everything, and production could not keep pace with consumption. But an "effective demand," as it is termed by Adam Smith, exists wherever one man is anxious to exchange the products of his own labour for that of other men. It is, therefore, of an effective demand only that political economists are speaking when they examine the circumstances of demand and supply in connexion with prices.

But although a demand, without the means of purchase, cannot affect prices, the universal desire of mankind to possess articles of comfort and luxury suggests other important considerations. As this desire is natural to man, and too often is so strong as to tempt him even to commit crime, it obviously needs no encouragement; men will always gratify it whenever they have the means, and these means consist in the products of their own labour. Hence all that is required to convert this desire of acquisition into an effective demand is ample employment for industry. Increase the production of all commodities and an increased consumption of them is the certain result; for, men having larger products of their own labour to offer in exchange for the products of other men's labour, are enabled to purchase what they are always eager to acquire. Production, therefore, is the great object to be secured, not only as furnishing a supply of commodities necessary and useful to mankind, but also as creating an effective demand for them. When trade is depressed by a languid demand, it is commonly said that increased consumption is all that is required to restore its prosperity. But how is this consumption to be caused? The desire to consume is invariable, and thus any falling off in consumption must be attributed to a diminished production in some departments of industry which causes an inability to consume. When production is restored, an effective demand for all articles will immediately follow; but until the productive energies of the consumers are in a state of activity it is in vain to expect from them an increased demand.

These considerations lead us to the conclusion that a universal glut of all commodities is impossible. The supply of particular commodities may easily exceed the demand for them, and very often does exceed it; but as the constant desire

* "Cost of production" is used by political economists in a sense different from that of commerce, and includes profits. (See M'Culloch's edition of Adam Smith, c. 7.) It means, in fact, the price below which no man would continue to sell his goods. An ordinary profit is a part of the cost of production in an enlarged sense, as much as the expense of wages and materials.

to obtain commodities needs nothing but the power of offering other commodities in exchange, to become an effective demand, it is evident that a universal increase of production is necessarily accompanied by a proportionate increase of consumption. Men are stimulated by no love of production for its own sake, but they produce in order to consume directly, or because by exchanging their produce with others they are able to enjoy the various comforts and luxuries which they are all desirous of obtaining. Active production, therefore, in all departments of industry causes a general and effective demand for commodities, which will continue to be equal to the supply unless it be checked by war, by restrictions upon commerce, or by other circumstances which prevent a free interchange of commodities.

A country is in the highest prosperity when there is an active and steady demand for commodities and labour, and a sufficient supply of them. Any disturbance of the proportion between one and the other is injurious to the community; and the injury is greater or less according to the extent and duration of such disturbance. When the proportion is well adjusted, the whole community derive benefit from the circumstance, both as producers and consumers; when it is disturbed, they are injured in both capacities.

Having described thus generally the nature and causes of demand, and its intimate connexion with supply, it becomes necessary to examine the influence of demand and supply upon one another, and upon production, consumption, prices, and profits. This influence varies according to the circumstances of the market, and the nature of the commodities to which its laws may be applied. These may be best understood by considering, 1st, the effects of a demand exceeding the supply; and, 2ndly, of a supply exceeding the demand.

1. The first effect of a demand exceeding the supply of a commodity, is to raise its price. As more persons want to buy the commodity than the producers are able or willing to supply, they cannot all obtain what they desire; but must share the supply between them in some manner. But their wants are very much regulated by the cost of gratifying them. One man would purchase an article for a shilling for which he may be unwilling or unable to pay two; while others, rather than forego the purchase, will consent to pay that amount. Those who have commodities to sell, finding that they have more customers than they can satisfy, immediately infer that they are selling them too cheaply, and that they could dispose of all their stock at a higher price. The price is accordingly raised, when the sale becomes limited to those who are not restrained from buying by the increased price. In principle, though not in outward form, the market is in the nature of an auction. The sellers endeavour to obtain the highest price for their goods; the price rises with the eagerness of those who wish to buy, and the highest bidders only secure the prizes. In the market, however, the competition of the buyers is not perceptible amongst themselves except through the prices demanded. Their competition determines the prices, but the sellers judge of its extent, and regulate their demands so as to obtain the greatest possible advantage from it.

Some commodities are positively necessary for the support of the people, of which the supply may fall very short of the demand and be incapable of increase. This is the case when there is a bad harvest in a country which is excluded from a foreign supply by war or by fiscal restrictions. Here the price rises in proportion to the deficiency of the crops. The competition for food is universal. Some, indeed, may be driven to the consumption of inferior articles of food, and others to a diminished consumption; but all must eat. The number of consumers is not diminished, while the supply is reduced; and the price must, therefore, rise and continue high until a fresh supply can be obtained. In a siege the competition is still greater. The prices of provisions become enormous: the rich alone can buy; the poor must starve or plunder.

A similar effect is produced if the supply, without being deficient, be confined to the possession of a small number of persons, who limit it to the consumers

in order to secure higher prices. However abundant corn might be in a besieged town, if one man were exclusively authorised by law to sell it, it might rise to a famine price, unless the people broke into the granaries, or the government interfered with the monopoly. Less in degree but similar in principle is the effect upon prices of every limitation of the market by fiscal restrictions. When any sellers are excluded, the others are enabled to raise their prices.

These are cases in which the supply cannot be increased to meet the demand, or in which the supply is monopolized. But the greater number of commodities may be increased in quantity, and the supply of them is not artificially limited. The price of these also rises when the demand exceeds the supply: but the increased price raises the profit of the producer and attracts the competition of others in the market. Fresh capital and labour are applied to the production of the profitable article, until the supply is accommodated to the demand or exceeds it. The prices gradually fall, and at length the profits are reduced to the same level as the profits in other undertakings, or even lower. The encouragement to further production is thus withdrawn, and prices are adjusted so as to secure to the producers the ordinary rate of profits, and no more.

But sometimes the demand for a commodity is diminished, if the supply fall short of it for any considerable time. There are various articles useful and agreeable to mankind but not essential to their existence, which they are eager to enjoy as far as they can, but for which they are not prepared to make great sacrifices. When the price of an article of this description is raised by a deficient supply, continuing for some length of time, it is placed beyond the reach of many persons who learn to regard it with indifference. They would buy it if it were cheap; but as it is dear, they go without it or are satisfied with a substitute. In this manner the number of consumers is diminished. Others again, who will not be deprived of an accustomed luxury, enjoy it more sparingly, and consume it in less quantities. But so long as the supply is not increased, the price will continue high, because the consumers who still purchase the article, notwithstanding its price, keep up an effective demand equal to the whole supply; while there is still a dormant demand, only awaiting a reduction of price to become effective.

For the same reasons a demand for articles is diminished when their price is artificially raised by taxation. The demand is gradually confined to a smaller number of persons, and many consume more sparingly. [TAX, TAXATION.]

In these various ways demand and supply become adjusted through the medium of price, whenever the one exceeds the other. This is the result of natural laws, the operation of which is of the highest value to mankind. If the supply be incapable of increase, it economises consumption: if the supply can be increased, it encourages production. In either case it is of great benefit to the consumer. To revert, for a moment, to the example of a bad harvest in a country excluded from all foreign supply. Suppose that prices did not rise, but remained precisely the same as if the harvest had been abundant, what would be the consequence? The whole population would consume as much bread as usual, and use flour in every way that luxury points out, unconscious of any scarcity. Farmers might even feed their cattle with wheat. By reason of this improvidence the whole of the corn would be consumed before the next harvest, and the horrors of famine would burst, without any warning, upon a people living as if they were in the midst of plenty. This evil is prevented by a rise of prices, which is a symptom of scarcity, just as pain is a symptom of disease. By timely precaution the danger is averted. A high price renders economy and providence compulsory, and thus limits consumption. The supply, therefore, instead of being exhausted before the next harvest, is spread over the whole year. In the case of food it is true that such economy is painful and presses heavily upon the poor: but this evil is a mercy compared with famine. If no privation had been endured before scarcity became alarming, none but rich men could buy a loaf: for every one who

had a loaf to sell would be risking his own life if he sold it.

These observations are also applicable in some measure to cases in which prices are raised by the supply being confined to one or to a few persons, who have contrived to buy up the whole or nearly the whole of any commodity. But such exclusive possession (sometimes improperly called a monopoly) cannot exist, for any length of time, in articles of which the supply is capable of increase. The extreme case has been put of a besieged town in which the whole supply of corn was monopolized by one man. Under those circumstances of course he would demand a high price; but unless his exclusive supply were upheld by law, it does not follow that the inhabitants would suffer on that account. A most provident consumption of food is absolutely necessary for the defence of a town, and no organization could distribute provisions according to the wants of the people so well as a system of purchase restrained by a high price. It must also be recollected that, without any such exclusive possession, the fact of the siege alone must raise prices by cutting off fresh supplies. If the siege continue, provisions are more likely to last out by the instrumentality of prices than by any other means. At the same time the sole possessor of the corn would be restrained from keeping back the supply beyond the actual necessity of the occasion by many considerations. He would know that if a popular tumult arose, if the town were relieved, the siege raised—a capitulation agreed to or the place suddenly carried by assault—the value of his exclusive property would be destroyed. His own interest, therefore, is coincident with that of the people. It is better for both that the supply should be meted out with parsimony; it is dangerous to both that it should be immoderately stinted.

In circumstances less peculiar than these, very little evil can arise from an exclusive possession of any commodity not protected directly or indirectly by law. If the supply be capable of increase, and the demand be sufficient to enable the owner to secure a high price, for reasons already explained, the market would rapidly be supplied from other quarters. If the supply cannot be increased, that fact alone would raise the price; and it is probable that the supply would not have been so great without the extraordinary activity of the capitalist who had been able to secure for his country the whole accessible supply to be collected from the markets of the world.

A monopoly, properly so called, is of a totally different character: for however abundant the supply of an article may be, it may, nevertheless, be inaccessible to the consumer. [MONOPOLY.] Such monopolies were properly condemned so far back as the reign of James I. (21 James I. c. 3), although vast monopolies are still indirectly maintained by our fiscal laws. [TAX, TAXATION.] The legislature of this country, however, did not observe any distinction between a legal monopoly and the great speculative enterprises of commerce, miscalled monopolies; and severe penalties were inflicted both by the common and statute laws against offences called "badgering, forestalling, regrating and engrossing." The impolicy of such laws was gradually perceived. If prices were occasionally raised by speculations of this kind, yet the restraints upon commerce, which resulted from these laws, were infinitely more injurious to the consumer. Many of the statutes were therefore repealed by act 12 Geo. III. c. 71; but the common law, and all the statutes relating to the offences of forestalling, regrating, and engrossing, were not erased from our commercial code until the year 1844 (act 7 & 8 Vict. c. 24).

When prices are high by reason of the demand exceeding the supply, it is by no means necessary that the profits of those who sell the dear commodities should always be greater than the profits in other branches of trade. It must always be recollected, that where scarcity is the cause of the high price, the sellers who demand it have the less to sell. Where scarcity is not the cause, but the demand is great because the supply, notwithstanding the exertions of producers, cannot keep pace with it, the profits are undoubtedly greater than usual, until the supply has been increased.

II. It is now time to consider the

effects of a supply exceeding the demand, and this division of the inquiry will require less elucidation, as the effects of such a condition of the market may be stated to be the very reverse of those which we have just been examining. When there is more of a commodity than people are prepared to buy, its price must fall. Its sellers must offer it for sale at the price at which they can induce people to purchase. All is now in favour of consumers. They are no longer bidding against each other: but the sellers are competing among themselves to get rid of their goods. The price falls generally in proportion to the excess of the quantity, but this result is very much qualified by the nature of the article. If there be an excess of supply in perishable goods, there is nothing to prevent the natural fall of prices. When fish is unusually abundant, it must be cheap, or a great part of it will be destroyed: it must be eaten at once, or not at all; and to induce people to eat it, it must be offered to them at a low price. But with articles which may be held back, in expectation of higher prices, their value may be partially sustained. Production may be reduced, and the stock gradually brought into the market, until the supply has been equalized with the demand; and wherever the article is such as to admit of voluntary increase or diminution, the natural result of an excessive supply is to reduce production, until the balance of supply and demand has been restored. This mutual adjustment is in perpetual operation, and is ordinarily effected with such precision, that it may be said, without exaggeration, that a large city is supplied exactly with everything its inhabitants require—even down to an egg or a pint of milk. There is always enough of everything, and rarely too much.

Whenever there is an excessive production of any commodity, it is an evil almost as great as scarcity. It is true that the consumer derives benefit from it, but the producing classes are most injuriously affected. In order to raise the value of the produce of their labour, they must cease to produce, or must produce in less quantities. The workmen are thus either deprived of employment altogether for a time, or are employed for a portion of their time only, at reduced wages; while their employers are disposing of their goods at low prices, which scarcely repay the outlay of their capital. Nor does the penalty of overproduction fall exclusively upon those engaged in the trade in which supply has exceeded the demand. Their distresses extend to other classes. It has been shown already that it is to production we must look as the cause of sustained consumption, and thus the pressure upon any considerable branch of productive industry must be sensibly felt by those who have the produce of their own labour to sell. Production has failed, and consumption must therefore be diminished.

The ruinous consequences of gluts, in particular staples of trade and manufacture, are too well known, especially in this country, to require any further illustration; but their causes are not always agreed upon. Such gluts are often attributed to the facility with which manufactures are produced by machinery, but we have shown that overproduction in all branches of industry is impossible, and if that be true, it is evident that when partial gluts are produced by the aid of machinery, that powerful agent must have been misapplied. It is not contended that nothing can be produced in too great abundance. Whether machinery be used or not, production must be governed by the same laws of demand and supply. Those things only must be produced for which there is a demand, and they must not be produced in greater abundance than the demand warrants. But the more generally machinery is used, the more abundant will be the products which men will have to exchange with each other, and therefore the better will be the market. It follows that machinery can only cause a glut when applied excessively to particular objects, precisely in the same manner as an excessive quantity of labour would cause one if applied where it was not needed by the demands of commerce.

The supply of markets is a very speculative business, and is often conducted with more zeal than discretion. When a particular trade is supposed to be more

prosperous than others, capitalists rush into it in order to secure high profits; and in this country the abundance of capital, the perfection of our machinery, and the skill of our workmen, enable them to produce with extraordinary facility. Over-production in that particular trade is the consequence, and all engaged in it suffer from the depreciation in the value of their goods; but if, instead of rushing into the favourite trade, they had distributed their enterprises more widely, their own interest and that of the community would have been promoted. When a ship is wrecked, if all the crew precipitate themselves into one boat, they swamp it; but if they wait till all the boats are lowered, and apportion their numbers to the size of each, they may all reach the shore in safety. And so it is in trade: one trade may easily be glutted, while there is room in other trades for all the capital and industry that need employment.

In proportion to the extent of the market and the variety and abundance of commodities to be exchanged, will be the facility of disposing of the products of capital and labour; and this consideration points out as the most probable antidote to gluts a universal freedom of commerce. When the free interchange of commodities is restricted, not only is a glut caused more easily, but its causes are more uncertain, and dependent upon unforeseen events. With the whole world for a market, the operation of the laws of demand and supply would be more equable, and the universality of the objects of exchange would make gluts of rare occurrence. The market would still be liable to disturbance by bad harvests, by errors in the monetary system, by shocks to public credit, and by war; but apart from these causes of derangement, demand and supply would be adjusted, and the productive energies of all nations called into full activity.

(Adam Smith, *Wealth of Nations*, book i.; M'Culloch, *Principles of Political Economy*, part i. ch. 7, and part ii. ch. 1, 2; Malthus, *Principles of Political Economy;* Ricardo, ch. 30; Mill, *Essays on Unsettled Questions of Political Economy*, Essay ii.)

DEMESNE. [MANOR.]

DEMISE, from the Latin Demissio, is commonly used to express an estate for years. The word *demisi*, 'I have demised,' is a term that is or may be used in the grant of a lease for years. The word demise may also signify an estate granted in fee or for term of life; but the most common signification is that which has been stated.

The term demise, as applied to the crown of England, signifies the transmission (demissio) of the crown and dignity by the death of a king to his successor.

DEMOCRACY (δημοκρατία), a word taken from the Greek language, like aristocracy, oligarchy, monarchy, and other political terms.

The third book of Herodotus (chap. 80—82) contains what we may consider to be the views of the oldest extant Greek historian on the merits and defects of the three respective forms of government as they are called, democracy, oligarchy, and monarchy. It would be difficult to extract from the chapters referred to an exact definition of democracy, but still we learn from them what were considered to be essentials: first, complete political equality (ἰσονομίη); secondly, the election of magistrates by lot (πάλῳ)—which, coupled with the first condition, implies that public offices must be accessible to all; thirdly, responsibility or accountability in public functionaries (ἀρχὴ ὑπεύθυνος), which implies a short term of office and liability to be ejected from it; fourthly, the decision by the community at large of all public matters (τὸ βουλεύματα πάντα ἐς τὸ κοινὸν ἀναφέρειν).

It is unnecessary to discuss the merits and defects of a democracy as pointed out in the above chapters, the defects being only certain consequences supposed to flow from, and the merits certain advantages incident to, a democratical institution, and neither being essentially parts of the fundamental notion of a democracy.

In forming a notion of a democracy as conceived by the Greeks, and indeed in forming any exact notion of a pure democracy, it is convenient to consider a

small community, such as a single town with a little territory, and to view such a community as an independent sovereignty. The institutions which in modern times have approached most nearly to the form of a pure democracy are some of the Swiss cantons. The boroughs of England, as existing in their supposed original purity, and as partly restored to that supposed original purity by the late Municipal Corporations Act, may help to explain the notion of a democracy, though they are wanting in the necessary element of possessing sovereignty. Further, to conceive correctly of a Greek democracy and of some of the democracies of the North American Union, it must be remembered that the whole community in such States consisted and consists of two great divisions, freemen and slaves, of whom the slaves form no part of the political system.

In most Greek communities we find two marked divisions of the freemen, the 'few' (ὀλίγοι) or 'rich' (δυνατοί, πλούσιοι), and the 'many') οἱ πολλοὶ, ὁ δῆμος) or 'not rich' (ἄποροι), between whom a fierce contest for political superiority was maintained. This contest would often end in the expulsion of the 'few,' and the division of their lands and property among the many; sometimes in the expulsion of the leaders of the 'many,' and the political subjugation of the rest. Thus the same state would at one time be called a democracy; at another, an oligarchy, according as one or the other party possessed the political superiority; a circumstance which evidently tended to confuse all exact notions of the meaning of the respective terms used to denote the respective kinds of polities. Under the circumstances described, what was called an oligarchy might perhaps be appropriately so called; what was called a democracy was not appropriately so called, even according to the notions entertained by the Greeks themselves of a democracy; for such so-called democracy was only a fraction of the community that had obtained a victory over another fraction of the community, less numerous and individually more wealthy: for the 'few' and the 'rich' were always united in idea; it being, as Aristotle remarks, incident to the 'rich' to be the 'few,' and the rest to be the 'many.'

Aristotle felt the difficulty of defining what a democracy is. He observes (*Politik.* iv. 4) that neither an oligarchy nor a democracy must be defined simply with reference to the number of those who possess the sovereign power: if a considerable majority, he says, are rich, and exclude the remaining body of freemen, who are poor, from political power, this is not a democracy. Nor, on the contrary, if the poor, being few, should exclude the rich, being more numerous, from all political power, would this be an oligarchy. Indeed such a supposition as the latter is impossible in a sovereign community, except during a short period of revolutionary change.

Aristotle, after some preliminary remarks, concludes by defining a democracy to be, when the freemen and those not the rich, being the majority, possess the sovereign power; and an oligarchy, when the rich and those of noble birth, being few, are in possession of the sovereign power. This definition of an oligarchy necessarily implies that the majority are excluded from participating in the sovereign power. It might be inferred, on the other hand, that in this definition of a democracy the few are excluded from the sovereign power: and such in this passage should be the meaning of the author, if he is consistent with himself. In another passage (iv. 4), where he is speaking of the different kinds of democracy, he speaks of the first kind as characterized by *equality* (κατὰ τὸ ἴσον): and by this equality he understands when the law (ὁ νόμος) of such a democracy declares that "the not rich have no more political power than the rich, neither body being supreme, but both equal, and all participating equally in political power." Such in fact approaches very near the exact notion of a pure democracy, or at least a democracy as pure as we have any example of; for all women, persons of unsound mind, males not adult, and slaves, are excluded from political power even in democracies. Aristotle adds: "But as the popular party (δῆμος) is the majority, and that which is the will of the majority is supreme, such a consti-

tution must be a democracy. Aristotle then mentions a second kind of democracy, in which the offices of the state are only open to those who have a property qualification, but it must be a small amount of qualification; and a third, in which all citizens have access to the offices of the state, unless they are under some special disability. But Aristotle still supposes that this second and third kind of democracy, as he defines it, is subordinate to the law (ὁ νόμος); he supposes something like what we call a Constitution, or certain fundamental laws, in conformity to which the state is administered. For, after enumerating the various species of democracies, he says, "There is another kind of democracy which in all other respects is the same as these, except that the people are sovereign and not the law; and this happens when the enactments of the people are supreme and not the law." His exposition is founded on the nature of the democratic assemblies in the Greek States, in which all the people met in the assembly individually and not by representatives, and were guided by their leaders. He does not explain what the law is which in some democracies is supreme, and here his exposition is deficient in fullness and clearness. But it appears that he means that there can be no stability, unless there are certain fundamental rules which are respected and regarded as unchangeable. Where a small community is sovereign, and every question can at any time be proposed to the assembly, and any law can be changed and altered, it is clear, as Aristotle observes, that if Democracy is a Polity, such a government, in which everything is liable to be changed at any moment, is not properly a Democracy. Still it is a Democracy; but if a Polity is a stable thing, such Democracy is not a Polity. The Canton of Schwyz in its constitution comes very near to the notion of such a Democracy. Modern Democracies by virtue of the representative system are secured against perpetual change, for the people legislate by deputy, and continual change is practically made impossible.

A pure democracy then is where every male citizen, with the exceptions above mentioned, forms an equal and integral part of the sovereign body; or, as Aristotle expresses it, where he is speaking of a democracy in which the people are supreme and not the Law, the democracy is "monarch, one compounded of many; for the many are supreme, not as individuals, but all collectively." This is the fundamental notion of a democracy: every other institution incident to or existing in a democracy is either a necessary consequence from this notion or a positive law enacted by the universal sovereign.

Thus it is absolutely necessary, in order that a democracy should exist and continue to exist, that the whole body should recognize the principle that the will of the majority must always bind the minority. There must therefore be some means of ascertaining the will of every individual, who is a member of the sovereign body, and there must be no interference with the free expression of his will, so far as such interference can be prevented. Whenever the persons who compose a democracy give their opinion on any subject, they express it by what is called a vote, which is recorded, and the majority of the votes is the will of the democracy. The vote may be given either openly by word of mouth or in writing; or it may be given secretly, which is called vote by ballot, and the vote by ballot is considered by many political writers essential to secure the voter from all interference with the free expression of his opinion. Every freeman, being an equal part of the sovereign, has no responsibility in the proper sense of that term, such as some persons dream of: the many who compose the sovereign are no more responsible than when the sovereign is one; and the notion that the vote of those who possess sovereign power should be open and notorious, on the ground of their being responsible, is inconsistent with the notion of their possessing sovereign power. The only way in which the universal sovereign can be so made responsible to a positive morality (for there is nothing else that such sovereign can be made responsible to) must be by the universal sovereign making such open voting a constitutional rule, which rule the same body that made may

repeal when it pleases. But if such rule is inconsistent with the free exercise by each individual of his share of sovereignty, it would be an act of suicide in the body politic.

If the democracy consider a constitution [CONSTITUTION] to be useful for carrying into effect the will of the sovereign, such constitution, when made by the expressed will of the majority, whatever may be the terms of such constitution, does not affect the principle of the democracy. Such constitution can be altered or destroyed by the same power that made it. If a representative body is necessary for effecting the purposes of the sovereign, such body may be elected and invested with any powers by the sovereign body, always provided that the representative body is responsible to the sovereign whose creature it is. Whatever institutions are created, and whatever powers are delegated by the sovereign many, the principle of democracy still exists so long as every individual and every body of individuals who exercise delegated power are responsible to the sovereign body by whom the power is delegated. Hence if property be made a qualification for certain offices, as in one of the forms of democracy mentioned by Aristotle, by the universal sovereign, such requisite qualification does not in itself alter the nature of the democracy, being only a rule or law fixed by the sovereign. It is, however, a rule or law of that class, the tendency of which, where the sovereign power is possessed by the many, is to undermine and ultimately destroy the power that made it.

Experience has shown that even where the universal people are sovereign, if the political community is large and spread over a great surface, every delegation of power, however necessary, is accompanied with danger to the existence of the sovereign power. The more complicated the machinery of administration becomes, and the more numerous are the administering bodies interposed between the sovereign and the accomplishment of the object for which the sovereign delegates part of his power, the greater is the risk that those who have had power delegated to them will make themselves the masters of those who have conferred the power. In a democracy the great problem must be to preserve unimpaired and undisputed the vital principle of the sovereign power being in all and in every individual, and to combine with this such a system of delegated powers as shall in their operation always recognize that principle to which they owe their existence. Aristotle (*Pol.* iv. 5) well observes that a Polity may not be democratic according to the Laws, that is, the fundamental Laws or Constitution, but that by opinion and usage it may be administered democratically: in like manner a democratic constitution may come to be administered oligarchically; and he explains how this may come to pass.

It may happen that other persons besides those enumerated may be excluded from participation in the sovereign power in a government which is called a democracy. The suffrage may be given only to those who have a certain amount of property, which resembles one of the cases mentioned by Aristotle. If the amount of property required should exclude a great number of the people, the government might still be called democratical rather than by any other name, if the persons excluded were a small minority compared with the majority. If they were nearly equal in numbers to the majority, they would find out some name for the majority which would express their opinion of the form of government: and the word that they would now use would be aristocratical, a word which would imply dislike and censure. If the portion of the people who were thus excluded from the suffrage should be a majority, the ruling body would be properly called an aristocracy.

A democracy has been here defined as it has existed in some countries and as it exists in others. No attempt is made to ascertain its origin, any more than the origin of society. It is here viewed as a form of government that may and does exist. The foundation of the notion of a democracy is that the sovereign power is equally distributed, not among all the people in a state, but among all the freemen who have attained a certain age, which is defined. Democracy therefore,

if we derive the notion of it from all democracies that have existed, instead of from certain wild theories of natural rights, is based upon the principle that it is for the general interest that some persons should be excluded from the possession of that political power which others enjoy. A democracy also like a monarchy can only give effect to its will through the medium of forms and agents. Practically there cannot always be a reference to the will of the majority on every occasion, no more than there can be in a monarchy. A monarch must govern by the aid of others, and the sovereign democracy must carry its purposes into effect by the aid of members of its body, to whom power sufficient for the purpose is given. The agent of a democracy is a representative body for the purpose of legislating. For the usual purposes of administration a democracy must have agents, officers, and functionaries, as well as a monarchy. The mode in which they are chosen and the tenure of office may be different, but while they act, they must have power delegated of a like kind to that which a monarch delegates. A form of government may be such that there shall be an hereditary head, a class with peculiar privileges, and also a representative body. The existence of a representative body chosen by a large class of the people has led to the appellation of the term democratical to that portion of such governments which is composed of a representative body and to those who elect such body. But the use of the terms democracy and democratical as applied to such bodies tends to cause confusion. It is true that such mixed governments present the spectacle of a struggle between the different members of the sovereign power, and as it is often assumed that the popular part aims at destroying the other parts, and as many speculators wish that it should ultimately destroy them, such speculators speak of such so-called democracy as a thing existing by itself, as if it were a distinct power in the state; whereas, according to the strict notion of sovereignty, there is no democracy except when there is no other power which participates in the sovereignty than individuals possessed of equal political power. When the popular member of a sovereign body has destroyed all the other members, the popular member becomes the sovereign body, and it is a democracy, if it then corresponds to the description that has been given of a democracy.

A curious article by M. Guizot, entitled 'Of Democracy in Modern Society,' has been translated and published in England. It is written with reference to the condition of France and in opposition to the assertion made by some French writers "that modern society, our France, is democratical, entirely democratical; and that her institutions, her laws, her government, her administration, her politics, must all rest on this basis, be adapted to this condition." M. Guizot successfully combats certain hypotheses and assumptions, most of which however have either been exploded by all sound political writers or would be rejected by any man of reflection. His essay contains, as we might expect from his attainments and long experience in the world, many just remarks, but it is disfigured and often rendered almost unmeaning by the lax use of political terms and a tone of mysticism and obscurity which are better adapted to confuse than to convince.

DEMURRAGE, the term used in commerce to denote the money payable to the owner of a ship on the part of the shippers or consignees of goods, as compensation for detention beyond the time stipulated for her loading or discharge, as the same is expressed in the charter-party or bills of lading. It is usual to insert in all charter-parties the number of working days allowed for the loading of the ship, and also for her unloading, and likewise the sum *per diem* which may be claimed for delay beyond those periods in either case, in addition to the stipulated freight. Sometimes the number of working days for loading and unloading are stated together, so that any delay in the one case may be compensated by greater speed in the other. When the owners of the ship enter her outwards for any port, to receive such goods as may offer, and consequently where no charter-party exists, there is no stipulation for demurrage in the part of loading, but in this case it is common to insert on the face of the bill

of lading a statement of the number of days after her arrival at her destined port in which time the goods must be taken from on board the ship, and also the rate of demurrage chargeable daily for any exceeding that time. No claim for demurrage can be set up where a ship is detained by contrary winds or stress of weather, nor where the government interferes to lay an embargo, nor where the port is blockaded by a hostile force.

DENIZEN, an alien born, who has been constituted an English subject by letters of denization granted by the crown through the home secretary of state. The facilities for an alien becoming naturalized, which the act 7 & 8 Vict. c. 66, provides, will render it easier for aliens to obtain naturalization than it was previously to obtain the lesser privilege of denizenship; and therefore, speaking of the future, denization will probably not be resorted to. Before this act was passed the number of aliens who became denizens was about twenty-five annually, and the number who were naturalized was about seven. The cost of letters patent of denization was 120*l.*, and it was the practice for the Home Office to insert several names in one patent for the purpose of diminishing the expense. A denizen is in a kind of middle state between an alien and a natural-born subject. [ALIEN.] He may take lands by purchase or devise, which an alien cannot; but he cannot take by inheritance, for his parent through whom he must claim, being an alien, had no inheritable blood. A denizen cannot transmit real property to those of his issue who were born before his denization. By 11 & 12 Wm. III. c. 6, a natural-born subject may derive a title to inheritance through alien parents or ancestors; the statute 25 Geo. II. c. 39, provided that the person who claimed under the statute of William III. must be in existence at the time of the death of the person to whom he claims as heir; but if the claimant be a female and have afterwards a brother or sister born, the estate will descend to the brother, or she and her sister will take it as coparceners. A denizen, when otherwise qualified, may vote for members of parliament. Naturalization gives the same privileges as denization and something more. [NATURALIZATION.] A denizen cannot be a member of the privy council, or sit in either House of Parliament, or hold any office of trust, civil or military, or be capable of any grant of lands or other thing from the crown.

DEODAND (*deodandum*, what is due to God). The word deodand expresses the notion of a thing forfeited, because it has been the immediate cause of death. The thing forfeited is sometimes called deodand, which signifies any personal chattel which is the immediate cause of the death of a human being. In England deodands are forfeited to the king, to be applied to pious uses and distributed in alms by his high almoner; but the crown most frequently granted the right to deodands, within certain limits, either to individuals for an estate of inheritance or as annexed to lands, in virtue of which grants they are now claimed.

Blackstone supposes "that the custom was originally designed in the blind days of popery as an expiation for the souls of such as were snatched away by sudden death, and for that purpose ought properly to have been given to holy church, in the same manner as the apparel of a stranger who was found dead was applied to purchase masses for his soul." But it is perhaps more reasonable to imagine that it was a civil institution intended to produce care and caution on the part of the owners of cattle and goods, and that the subsequent application of the things forfeited has been mistaken for the origin of the law itself. The custom was also a part of the Mosaic Law. (*Exod.* xxi. 28.) In England it has prevailed from the earliest period, and there is no trace of the deodands having been applied to pious uses. The custom is thus mentioned by Bracton, one of the earliest writers on English law, who lived in the reign of Henry III.: 'Omnia quæ movent ad mortem sunt deodanda,' which is Englished in the 'Termes de la Ley,'

> What moves to death, or killed the dead,
> Is deodand, and forfeited.

A different rule prevails when the thing which occasions accidental death is at rest, and is composed of several parts. For instance, if a man, in climbing up

the wheel of a cart, falls and is killed, the wheel only is forfeited; but if the cart is driven against the man, and the wheel goes over and kills him, not only the wheel but the cart and its loading are forfeited. In cases of homicide, the instrument of death is forfeited, even if it belongs to an innocent party, for which reason, in all indictments for homicide, a value is placed on the weapon used in killing, that the king or his grantee may claim the deodand, for it is no deodand unless it be presented by a jury of twelve men. Accordingly, when the coroner's jury find the cause of death, they ought also to find the value of the thing which was the immediate cause of a death. It is common for the coroner's juries to award a given amount as a deodand less than the value of the chattel; and though it is said that this finding is hardly warrantable by law, yet the Court of King's Bench has usually refused to interfere on behalf of the lord of the franchise to assist his claim.

The general rule, then, is, that all personal chattels in motion which kill a human being are forfeited. According to the definition of deodand, a thing is only liable to be forfeited when it is a personal chattel. If it be a thing fixed in the freehold, as a bell in a steeple which should come down on the head of the man who is ringing it, the bell is not forfeited, for it is said that things cannot be deodands unless they are severed from the freehold.

DEPARTMENT (or in French DE'PARTEMENT), a territorial division of France, introduced by the States-General in the latter part of the reign of Louis XVI. We shall take this opportunity to give some account of the territorial divisions of France as they exist at present.

A commune is the smallest territorial division in the present system of France. In the rural districts and in the smaller towns a commune may be considered as equivalent in area and population to our ordinary parishes, or to the townships into which our more extensive parishes are divided. It is only in respect of area and population that we compare the communes of France with our own parishes: the two divisions were made for different purposes, the parish being an ecclesiastical division, which existed in France as well as in England, while the commune was for civil or military purposes. There is moreover this difference, that while our larger towns and cities (especially those whose extent and importance are of an ancient date, such as Norwich, Exeter, Bristol, or York) consist of several parishes, the larger towns of France, with the exception of Paris, form but one commune. The term commune, which is nearly equivalent to corporation, is of ancient date. When Louis VI. (le Gros) sought to raise from the towns of the royal domain a burgher militia as a substitute for the troops of his rebellious and disorderly vassals, and in order to form an alliance between the crown and the commons by sheltering the latter against feudal oppression, he formed the freemen inhabiting the towns into communautés (in the Latin of the middle ages communitates) or corporations, gave them power to raise troops from among themselves, and conferred upon a municipal body, constituted for the purpose, an authority over these troops similar to that which had been exercised over the baronial levies by the great lords themselves, and by their subordinates, the counts, or governors of towns, the viscounts, castellans, &c. These are not to be regarded as the first municipal corporations which had existed in France. Under the Roman dominion there were many; but during the distracted reigns of the later Carlovingian princes, these corporations had mostly, if not entirely, become extinct. The militia of the towns was designated in the Latin of the middle ages communiæ (communes), communitates parochiarum (the commonalties of the parishes), or burgenses (the burghers or burgesses). Where the town consisted of several parishes the troops were formed into smaller bodies according to their parishes, and marched into the field in those divisions, the parochial clergy accompanying their respective parishioners, not to join in the conflict, but to discharge their spiritual duties of preaching to them, confessing them, and administering religious rites to the dying. Some communes consisted of a number of small towns united under one corporation charter. In pro-

cess of time the greater barons followed the example of the king, in order to become independent of their vassals, among whom the like insubordination existed as among the vassals of the king.

The municipal officers were generally designated Scabini or Echevins, and the principal of them had the title of Major or Maire (Mayor). The communes enjoyed many rights and exemptions; they fortified their respective towns, and were, in fact, so many municipal republics scattered over the kingdom, constituting the most substantial bulwark both of the public liberty and the rights of the crown against the encroachments of the nobility. As, however, the regal power gained strength, the influence and importance of the communes declined. Their militia came into disuse when the kings of the race of Valois began to form a standing army; and upon various causes or pretexts many of the incorporated towns lost their charters, and returned under the jurisdiction of their feudal lords. (For the history of the communes see Raynouard, *Hist. du Droit Municipale en France*, 1829.)

Under the present system of provincial organization the whole of France, the country as well as the towns, is divided into communes. As the plan has been to assimilate the divisions for civil and ecclesiastical purposes, we believe that the communes may in the rural districts and the smaller towns be regarded as ecclesiastically equivalent to our parishes. Each has its church and its curé or clergyman. Some have also succursales or chapels of ease. The larger towns have several churches.

The local administration and the revenues of each commune are placed in the hands of a municipal body, which consists of a mayor and one or more assistants (adjoints), and a certain number of councillors. The number of adjoints and of councillors varies with the population. In the larger communes the mayor and his assistants are appointed by the king, and in those of smaller size by the prefect; but they must be selected from among the councillors elected by the inhabitants. This gives the central government the nomination of about 90,000 functionaries. In a commune which contains a population not exceeding 500, the number of councillors is 10; and when the population is 30,000 and upwards, the number is 36. The term of office for mayors and adjoints is three years; and though they may be temporarily suspended in their functions by the prefect, they can only be dismissed by the king. The members of the municipal body are elected by the inhabitants who pay the largest amount of direct taxes, and, consequently, there is no fixed qualification. In communes with a population not exceeding 1000 inhabitants, one-tenth are eligible as electors, which proportion is increased 5 per cent. for communes exceeding 1000 and not exceeding 5000 population; and by 4 and 3 per cent. according to the further extent of the population. The number of communal electors in France is 2,795,000, and they elect 426,000 communal councillors. In communes with a less population than 2000, the council are elected by the voters assembled in one body; but those of larger population are divided into sections as nearly equal as possible, and each section returns its own councillors, as in this country where a town is divided into wards. In communes of 500 inhabitants and upwards, near relations, as a father and brothers, cannot be at the same time members of the communal council. Provision is made by the law for the meeting of the council four times a-year, and each sitting may be continued for ten days. On the requisition of the mayor, or of one-third of the council, the prefect or sub-prefect may call an extraordinary meeting. Communal councils are prohibited from corresponding with other councils, or issuing protestations, proclamations, or addresses. The king may dissolve a municipal council, but the ordonnance must make provision for a new election. According to the terms of the law of 21st March, 1831, the mayor acts under the authority and surveillance of the prefect or sub-prefect. The duties which devolve upon him may be compared generally to those which are severally discharged by the overseers of the poor and the churchwardens and overseers of the highways in an English

parish; but as he is a ministerial officer of the prefect, and executes the orders of the prefect or those which are transmitted through him by the central government, the mayor has duties for which there is no analogy in the administrative system of the rural parts of England. The mayor of a French commune has the absolute right of appointing local officers in some cases; but in others he must have the approbation of the council and the sanction of the prefect. The municipal council "determines" matters relating to the public property of the commune, and executes its decisions, provided that within thirty days they are not annulled by the prefect as contrary to the law or to the routine of the administration. The council "deliberates" on a variety of other subjects affecting the immediate interests of the commune; gives its "advice" on a number of others; and is authorized to express its views and wishes generally on all objects of local interest. The sittings of the council are not public, and its discussions cannot be published officially without the sanction of the prefect. On the demand of any three members the votes may be taken by ballot. The budget of the commune is open to inspection, and in the communes which have a revenue of 10,000f. and upwards it is required to be printed. A certain class of expenses, which are enumerated in the municipal law, are obligatory; such as the payment of municipal officers, the keeping in repair the town-hall, a portion of the expenses of public instruction and the national guard, the cost of foundlings, of public cemeteries, &c. Every commune is bound to maintain a primary school, or to unite with another commune for that purpose. These schools are supported by a government grant and by a communal tax. A law of 25th June, 1841, gives to the prefect of a department the power of fixing, with the advice of the council of arrondissement, the minimum of the monthly contributions of a commune to the primary schools, and a maximum for the number of free scholars. All other expenses are "optional." In case of a council refusing to provide for the discharge of obligatory expenses, the necessary sum may be constituted a part of the communal budget by a royal ordonnance for the larger communes, and by an arrêt of the prefect for the smaller communes. By the same authority an extraordinary contribution may be levied, the proportion of which is, however, limited by the law of 25th June, 1841.

A department consists of several arrondissements, usually four or five: some departments have only three arrondissements; others have as many as six. There are eighty-six departments. These departments have been divided into

363 arrondissements,
2835 cantons,
37,021 communes.

A canton is a division consisting of several communes (the average is nearly fifteen); over each a judicial officer entitled juge de paix (justice of the peace) is appointed. These functionaries receive a small salary; they decide civil suits if the amount in question is under 50 fr.: and all suits whatever must be heard by one of them (in order that he may if possible bring the parties to an agreement) before the cause is carried into a higher court. The number of juges de paix is 2846. They are appointed by the government, but are not removable at pleasure. Each juge has a greffier (clerk), and to each court are attached one or two huissiers (bailiffs).

An arrondissement (circle) comprehends several cantons, seven on the average of France. The arrondissements may be compared to the Hundreds or Wapentakes of English counties. Each arrondissement is under the administration of a sous-préfet (sub-prefect), subordinate to the prefect of the department, to whom he addresses a memorial on anything of importance to the arrondissement, assigning the reasons on which his opinions are founded. He receives and settles the accounts of the maires of the several communes. He is assisted by a conseil d'arrondissement (council of the arrondissement), which consists of not fewer than nine members, and otherwise as many as there are cantons in the arrondissement. They are elected for six years, and their qualifications consist in the payment of 150fr. a year direct taxes. The electors are the highest taxed inhabitants of the

canton, in the proportion of 1 to 100. This council, like that of the department, meets at a time fixed by the government. It holds two ordinary sittings annually, one before and the other after the sitting of the Council general of the department. In the first of these sittings the Council deliberates on the allocation of the contingent of direct taxes for the arrondissement and listens to the claims of communes who ask for a reduction of their proportion. In the second part of its sittings the Council apportions the amount of direct taxes amongst the different communes. Should it fail to do this, the prefect is authorized to supply the omission on the basis of the preceding repartition. The sub-prefect has the right of speaking at the sittings of the council. Councils of arrondissement are authorized to make a report to the prefect of the wants and condition of the arrondissement, similar to that which the departmental council addresses to the minister of the interior. As the capital of the department is also the chief place of an arrondissement, the prefect and the prefectorial (not the departmental) council discharge in that arrondissement the duties which in the other arrondissements are assigned to their respective sub-prefects and councils.

At the head of each department is an officer entitled préfet (prefect), who has alone the administration of the local government. His usual residence is at the departmental capital; but he makes every year a circuit of inspection through his department, and gives an account of the result of his circuit to the minister of the interior. The prefect is assisted by a conseil de préfecture (prefectorial council), consisting of three, four, or five members, which decides upon individual appeals for an entire exemption or a reduction of the direct taxes; and upon questions arising from the execution of public works, whether between the government and the contractors as to the particulars of the contract, or between the contractors and parties who complain of injuries sustained at their hands, and upon the indemnity due to individuals whose possessions have been required for carrying on public works. The prefect when present at the sittings of this council acts as chairman, and in case of an equal division has a casting vote.

In each department there is a council general with as many members as the department contains cantons, but the number must not exceed thirty. Each canton elects a member whose qualification consists in the payment of 200fr. a-year direct taxes. He is elected for nine years, but a third of the council is renewed every three years. The electors are the highest taxed inhabitants, in the proportion of 1 to 1000. The council assembles annually by virtue of a royal ordonnance which fixes the time and duration of its sittings, which are private; and on the demand of four members the votes may be taken by ballot. The council cannot deliberate except in the place assigned for its sittings, and on matters within its jurisdiction as determined by the law of 23rd June, 1833; nor can it put itself in correspondence with the council of another department or of an arrondissement. On an infraction of these articles the council is suspended by the prefect; and printers or others who publish the proceedings of a council which commits either of these infringements is liable to imprisonment for a period of from two to six months, to the loss of civil rights and of all public employment for ten years. The powers and functions of both the councils of a department and of an arrondissement are regulated by a law of 10th May, 1838. Their powers are not near so extensive as those of county magistrates in England assembled at quarter-sessions. The central authority of the government pervades every part of the local administration from the commune to the department. The chief business of the council is to apportion between the arrondissements the direct taxes which are required by the general government; to hear and determine upon appeals made by the councils of arrondissements against this assessment; to levy, within certain limits fixed by law, an additional tax, destined, like our county-rates, to meet the expenses of the local administration; to audit the account yearly rendered by the prefect of the expenditure of this local revenue; and to express, in a report addressed to the

minister of the interior, an opinion upon the condition and wants of the department.

The number of members of councils-general is 2300, and of councils of arrondissements 3200.

The departments and arrondissements are electoral divisions. The members of the Chamber of Deputies are chosen for the departments, not for single towns, however important or populous; so that the deputies are all, according to our phrase, county members. [CHARTE.]

Each arrondissement has a court of justice, entitled tribunal de première instance, which, except in a very few cases, has its sittings at the capital of the arrondissement. These courts commonly consist of three or four ordinary and two or three supplementary judges: a few arrondissements which include large towns, such as Marseille or Bordeaux, have a considerably greater number of judges, who are divided into two or more sections. To each court there is a procureur du roi, or attorney-general; and where the court consists of two or more sections there are deputy attorneys. Each department has a tribunal criminel (criminal court), or cour d'assize (assize court), consisting of a president, who is a counsellor of the cour royale, to the jurisdiction of which the department is subject, two ordinary and two supplementary judges: to each court is attached a procureur du roi, or attorney-general, and a greffier, or registrar. These courts, except in a few instances, have their seat at the capital of the department. Besides these courts, there are in different parts of France twenty-seven higher tribunals, called cours royales, consisting of from twelve to thirty-three salaried judges. Each of these courts has under its jurisdiction several departments. There is an appeal from these courts on questions of law, not of fact, to the supreme court, cour de cassation, at Paris. The departments are also formed into twenty divisions militaires, or military districts: the head-quarters of these districts are fixed at some important town, usually at the capital of one of the included departments. The departments are also grouped into divisions for other objects of central government: 1, as to bridges and highways; 2, forests; 3, mines.

A department usually constitutes an ecclesiastical diocese. In a few instances two departments are comprehended in one diocese; and in one or two cases a department is divided between two dioceses. The dioceses of France amount to eighty, of which fourteen are archbishoprics and sixty-six bishoprics.

The instruction of youth in France being under the surveillance of government, has occasioned an arrangement of territory with a view to this object.

DEPORTATION. [BANISHMENT.]

DEPOSIT. The term is applied to the sum of money which under 43 Geo. III. c. 46 a man might deposit with the sheriff after he was arrested, instead of putting in special bail. The amount of the deposit was the sum sworn to on the back of the writ. (Blackstone's *Comm.* iii. 290.)

Deposit is also used for any sum of money which a man puts in the hands of another as a kind of security for the fulfilment of some agreement, or as a part payment in advance.

The Roman word depositum signified anything which a man put in the hands of another to keep till it was asked back, without anything being given to the depositarius for his trouble. The depositor was called deponens or depositor. The depositary was bound to take care of the thing, and to make good any damage that happened to it through fraudulent design (dolus) or gross neglect (lata culpa). The depositor could recover the thing by action; but the depositary was entitled to satisfaction for any loss that he sustained in the matter of the deposit by any default (culpa) on the part of the depositor. The depositary could make no use of the deposit, except with the permission of the depositor, either given in express words or arising from implication. If a man refused to return a deposit, and was condemned in an action of deposit (actio depositi), infamy (infamia) was a consequence of the condemnation. (Dig. 16, tit. 3; Juvenal, *Sat.* xiii. 60.)

DEPOSITION, in its extended sense, means the act of giving public testimony, but as applicable to English law the word

is used to signify the testimony of a witness in a judicial proceeding reduced to writing. Informations upon oath and the evidence of witnesses before magistrates and coroners are reduced into writing in the very words used by the witnesses, or as near as possible thereto. Evidence in the Court of Chancery is taken in written answers to interrogatories, which are also in writing, either by commissioners appointed for that purpose in the particular cause, if the witness resides at a greater distance from London than twenty miles, or if he resides nearer or is otherwise willing to appear, before the examiners of the Court of Chancery. These depositions are the evidence which is read at the hearing of the cause. The course of the Ecclesiastical Court is also by written interrogatories and answers. The Court of Chancery has power to grant a commission for the examination of witnesses residing abroad; and by the 1 Wm. IV. c. 22, which extends the provisions of the 13 Geo. III. c. 64, the courts of law at Westminster, in actions pending before them, have power to order the examination of witnesses residing in any of his Majesty's foreign dominions. By the 13 Geo. III. c. 63, § 40, in cases of indictments in the King's Bench for misdemeanors or offences committed in India, that court may award writs of mandamus to the judges of the courts in India to examine witnesses concerning the matters charged in such indictments and offences, and the depositions so taken may be read at any trial for such misdemeanors or offences. Sections 41 and 42 provide for taking the depositions of witnesses on any information or indictment in the King's Bench against the judges of the Supreme Courts in India, and in proceedings in parliament for offences committed in that country. By section 44, when an action or suit in law or equity, the cause whereof shall arise in India, is commenced in any of the courts of Westminster, such court on motion may award a writ in the nature of a mandamus to the judges of the courts in India for the examination of witnesses, and such examination may be read at any trial or hearing between the parties in such action or suit. The 1 Wm. IV. c. 22, § 1, extends the power and provisions of the 13 Geo. III. c. 63, to all colonies and places under the king's dominion, and to all the judges of the same, and to all actions depending in the courts of law of Westminster. The fourth section of this act empowers the courts at Westminster, and also the Court of Common Pleas of the County Palatine of Lancaster and of Durham, and the several judges thereof, in every action depending in such courts, upon the application of any of the parties to such action, to order the examination upon oath, upon interrogatories or otherwise, before the master or prothonotary of such court, or person or persons named in such order, of any witnesses within the jurisdiction of the court where the action shall be depending, or to order a commission to issue for the examination of witnesses on oath in places out of such jurisdiction by interrogatories or otherwise. But (§ 10) no examination or deposition to be taken under this act shall be used as evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the jury that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable, from permanent sickness or other permanent disability, to attend the trial.

When a witness is above the age of 70, or very infirm, or about to go abroad, so that his testimony may be lost before the regular period for his examination arrives, the Court of Chancery will order him to be examined *de bene esse*, as it is termed; that is, his examination is received for the present, and will be accepted as evidence when the proper time for taking the other evidence in the cause arrives, if the witness cannot be then produced. Courts of law do not possess similar power without the consent of both parties, but in order to enforce consent they will put off the trial at the instance of a defendant, if the plaintiff will not consent; and if the defendant refuse, will not give him judgment in case of nonsuit.

The Court of Chancery will also, upon bill filed by a person in the actual and undisturbed possession of property, and who has therefore no means of making his title the subject of judicial investigation, but which nevertheless may be ma-

terially affected by the evidence of living witnesses, allow the witnesses to be examined in *perpetuam rei memoriam*, that is, to perpetuate testimony. This is done in order that if any of the witnesses should die before the title to the property is disputed, their evidence may be preserved; otherwise a claimant might lie by until all the evidence against him was lost.

Depositions are not admitted as evidence in courts of law, unless the witness is either dead, or from some cause beyond the control of the party seeking to read the deposition, cannot be produced, or against any other persons than the parties to the proceeding in which they were taken, or claimants under them, and who had the opportunity of cross-examining the witness. In cases, however, relating to a custom, prescription, or pedigree, where mere reputation would be good evidence, a deposition may be received as against a stranger.

Depositions taken in Chancery *de bene esse* before answer put in, unless the defendant is in contempt for refusing to answer, are not admissible as evidence in a court of law, because until the defendant has answered he could not have an opportunity of cross-examining the witness; but the Court of Chancery will sometimes direct such depositions to be read. Such order, however, while it concludes the parties, is not binding upon the court of law; of course, however, if the depositions be not read and the decision should be contrary to justice, the Court of Chancery would interfere as between the parties.

DEPRIVATION. [BENEFICE, p. 351.]

DEPUTY. [CHARTE, p. 393.]

DESCENT, in English law (from *discent*, Norman French, and so written in our older law books), may be defined to be the rule of law pursuant to which, on the death of the owner of an estate of inheritance, without making any disposition thereof, it descends to another as heir. Inheritance is sometimes used in the same sense as descent, though it rather signifies that which is, or may be, inherited, or taken by descent. (Littleton, sect. 9.)

The law of inheritance with respect to descents which have taken place since or shall take place after the 1st of January, 1834, is now regulated by the Act 3 & 4 Wm. IV. c. 106. The object here is merely to explain the general notion of descent.

All modes of acquiring property in land by the English law are either Descent or Purchase. Descent, or hereditary succession, signifies the title by which a man acquires an estate in land as the heir-at-law of a person deceased.

The death of the owner of the estate of inheritance is the occasion of the descent of it. In his lifetime there can be no descent, and therefore no heir, though there may be an "heir apparent," or "heir presumptive." An heir apparent is he who must be the heir, if he lives till the inheritance descends; an heir presumptive is he who may be forestalled by the birth of a nearer heir.

The person who dies must be at his death owner of the estate of inheritance, or no descent of it will then take place.

Inheritances, otherwise called *hereditaments*, things which may be *inherited* or *taken by descent*, are various. The principal of these is the Crown, or royal title, dignity, and power of the king of the British Empire, the descent of which differs in one material respect from that of a private inheritance, inasmuch as where there are no sons of the king, an elder daughter takes the whole of the inheritance, in exclusion of the younger sisters. In the case of the descent of private land, when there are several daughters, they all take alike in equal shares, and are called parceners, or coparceners. Dignities and honours, as baronies and other peerages, are descendible, according to the limitations contained in the patents by which they were created. If created by summons in the first instance, they are called dignities in fee, and are descendible to females. [BARONY.] Finally, all the subjects of real property, and all annuities, offices, and whatever other things may be "held in fee," are "descendible," and this whether they are in possession, reversion, remainder, or expectancy. So are all rights and titles to things that may be held in fee, and the expectancy of an heir apparent or presumptive. There are also "descendible freeholds," that is, estates

created by leases for lives, which, though not estates in fee, may during their continuance be inherited as if they were. It has been already noticed [CHATTEL] that the large class of things called chattels are not generally the subject of descent, but that some of them are.

Upon the death of the owner, the inheritance devolves upon the heir, without any act done by him, or price paid for his acquisition: in both these respects, the present law of descent differs from the old feudal customs from which it is derived. According to the old feudal customs, upon the death of the tenant of a fee, the lord of whom it was held was entitled to take and retain it till the heir, for whom proclamation was made, appeared, and paid a sum of money called a relief [RELIEF] as the consideration for his admission into the tenancy; whereupon "seisin" or possession was given him, and he took the "oath of fealty" [FEALTY], and if the tenancy was by "knight's service," "did homage" [HOMAGE] also to the lord. All this was more like a new donation, than the present quiet succession of an heir. The descent of copyholds, however, is still regulated much in the manner described. The heir was not, however, formerly, to the same extent as now, subject to the charges and debts of the deceased tenant, in respect of the property that descended to him. [ASSETS]. The present law of descents qualifies materially in one respect the title of the heir to the inheritance descended. Though it makes him as completely the owner of it as if he had purchased it, that is, acquired it otherwise than by descent, as to right of enjoyment and power of alienation, it does not allow it at his death to descend as if he had purchased it, but, on the contrary, declares that it shall descend as if he had never had it. Such at least is the new law. (§ 1, 2, of the Act.) The heir of an inheritance must be always the heir of the last "purchaser" of it, that is, of the last person who acquired the property "otherwise than by descent, or than by an escheat partition or inclosure, by the effect of which the land shall have become part of, or descendible, in the same manner as other land acquired by descent." The practical importance of this rule cannot be understood without knowing who the person is who in any case is designated by the law as the "heir" to another.

As to descents in fee simple, the fundamental rule is, that any person of *kin* to another, that is, descended from the same ancestor, however distant, may be his heir, but that no person connected with him by marriage or affinity only, can inherit to him. [CONSANGUINITY; AFFINITY.] If the son inherits to the father, his mother cannot succeed to him, for though she may be heir to the son, she cannot be heir to the father, from whom, and not from the son, "the descent is to be traced." On the other hand, if the father inherits to the son, the mother may succeed to him, for though she cannot be the heir of the father, she may be the heir of the son. The fee, fief, or feud, which may thus now descend to the kindred of the purchaser *in infinitum*, was once nothing more than a life-interest given to the tenant or holder of it in consideration of the military services to be rendered by the tenant to the donor. The fee was afterwards permitted to descend to the issue of the original grantee, and in process of time to his *collateral* heirs. This was only effected by means of a fiction; for so firmly settled was the notion that "the blood" (descending) alone of the purchaser or original grantee could be allowed to inherit, that the feudal law was never brought to allow collateral heirs, as such, to be heirs. But when a feud was granted *ut antiquum*, that is, to be held by the donee as if it had descended to him from some remote unknown ancestor, then the law permitted collateral relations however distant, that is, relations descended from any common ancestor, however remote, to inherit. For it was not known how far distant the ancestor was who was supposed to have been the purchaser, nor who he was, and it was sufficient that the heir *might* be a descendant of his. (See for the early history of inheritable fiefs, Robertson's *Charles V.*, Sullivan's *Lectures*, Wright's *Tenures*, Gilbert *on Tenures* by Watkins, Butler's *Coke upon Littleton*, 191, a. v. 4, where there is a comparison of the Roman and feudal laws of inheritance.)

While the law, however, went thus far,

it did not, for reasons which some writers have attempted to explain, allow the *lineal ancestors* of the purchaser of the *quasi* ancient feud to inherit it, nor his relations by the half blood, that is, persons descended not from the same father *and* mother as the purchaser, or any lineal ancestor of his, but from one of them only. Still further exclusions followed from the rule which was afterwards established, that the heir of the fee must be the heir of the person last *seised* or possessed of it, as well as a kinsman of the whole blood to the actual purchaser. Among the practical consequences of this rule were the following: that if the child of the actual purchaser inherited to him, and became seised, the purchaser's child by another wife could not succeed, because only half brother to the person last seised; and that if the father's brother inherited to the son and became seised, the mother's brother could not succeed, because only related by marriage to the person last seised. All these exclusions and the fictions of the ancient feuds are done away with by the new act, the effect of which is, as before said, to admit among the heirs of the purchaser all his kindred, both of the whole and the half blood, and notwithstanding any previous descent to any heir of his. This it does by enacting that every lineal ancestor shall be capable of being heir to any of his issue (§ 6); that any person related to the purchaser by the half blood shall be capable of being his heir (§ 9), and that in every case descent shall be traced from the purchaser (§ 2). Still, however, the wife or her kin cannot inherit to the husband, nor the husband or his kin to the wife. But the hardship of these exclusions is at least mitigated by the law of dower and curtesy, which must be read together with the law of descent as one law. The order in which the kindred of the purchaser inherit is a matter purely legal. The practical difficulty in finding who is heir, is not the difficulty of understanding the law, but in ascertaining the facts upon which the law of descent operates. The new act declares that the last owner of the land shall be presumed to be the purchaser, unless it can be proved that he is not; and this rule diminishes the difficulty of tracing the descent.

The English word *heir* comes from the Roman *heres;* but the Roman word heres had two significations. It signified either the person or persons to whom a testator gave his property by testament; or the person or persons who took the property of a deceased person in case of his dying intestate. The heres by testament corresponds to the English devisee, and to the person or persons to whom a man bequeaths his personal estate for the purpose of distribution, that is, his executors. Further, the Roman law made no distinction between land and other property, as to descent or testamentary disposition. The Roman heres, therefore, who succeeded in case of intestacy (ab intestato) filled the place of the English heir at law, and also of the person who obtains the administration of an intestate's personal estate. Again, in the case of intestacy among the Romans, all persons were heredes, and took the property in equal portions, who were in the same degree of consanguinity to the intestate: sons and daughters who were in the power of their father inherited alike, whether the real children of the intestate or his adopted children; and the wife who was in the hand of her husband (in manu) inherited with the brothers and sisters of the intestate, for such wife was considered as a daughter. If a man left children living, and there were also children of a son deceased, these grand-children took the share which their father would have had if living: thus the division among the grandchildren in this case was not *in capita*, but *in stirpes*. In fact, the Roman law of succession, in case of intestacy, should be compared with the English law of succession to the personal estate of an intestate, which is founded on the Roman law; and it should not be compared with the English law of descent, which is of a feudal character. The law of Roman intestacy is stated by Gaius, lib. iii.

The rule of descent, which makes the eldest son, brother, &c. sole heir, exclusive of the other children, or the other nephews and nieces, &c., is well known by the name of 'the law of primogeniture.' [PRIMOGENITURE.] It is almost peculiar

to our country, not having been observed by the ancients, and being generally abolished where it existed on the Continent and in the United States of America. For the history of this rule, see Hale's *History of the Common Law;* Sullivan's *Lectures;* Robinson *On Gavelkind;* 2 Blackstone's *Com.;* Wright's *Tenures;* and for observations on its expediency, Smith's *Wealth of Nations.* The preference of males to females is not so peculiar. The Jews, Athenians, and Arabians, though not the Romans, gave the inheritance to sons exclusive of daughters. (For the Athenian law of inheritance, see Jones's *Isæus;* for that of the Jews, Selden, *De Successionibus apud Hebræos.*) This is not however the case among most foreign nations at present. The preference of the child of the elder son dead in the purchaser's lifetime to the younger son has some interesting historical associations. The law on this point seems not to have been settled till after most of the other rules of descent. It was still somewhat doubtful when King John kept his nephew Arthur from the throne by disputing it. (2 Blackstone's *Com.;* Sullivan's *Lectures,* lect. 14. In Robertson's *Charles V.*, vol. i. p. 272, there is a curious story of the trial by combat of this point of law.)

The descent of estates tail (regulated by stat. 3 Ed. I. c. 1) differs from that of fees simple principally in this, that only the descendants of the first donee can inherit; and of these only males claiming exclusively through males can be heirs when the estate is in 'tail male:' when it is in tail female (a mode of gift which is quite obsolete), only females claiming exclusively through females. [ENTAIL.] The limited descent of the estates, together with other qualities of them, makes them the best representatives at present existing (excepting indeed copyholds) of the ancient fiefs.

(On the law of descent, as it existed before the late act, see Sir Matthew Hale's *History of the Common Law,* chap. xi.; 2 Blackstone, *Com.*, chap. xiv.; Cruise's *Digest,* vol. iii. Watkins *On Descents* principally treats of curious points, many of which have ceased to be important. As to the reasons for the new alterations, see *First Report, Real Property Commissioners.*)

DESERTER, an officer or soldier who either in time of peace or war, abandons the regiment, battalion, or corps to which he belongs, without having obtained leave, and with the intention not to return.

The word deserter is from the Roman *Desertor,* which had various meanings. A soldier who did not give in his name (dare nomen) when duly summoned to service might be treated as a Desertor. (Liv. iii. 69.) The soldier who fled in battle and left the standard was called Desertor, and the punishment was death: sometimes every tenth man was taken by lot and put to death. (Livy. ii. 59; Plutarch, *Crassus,* c. 10.) Desertion among the Romans was a general term for any evasion of military duty: the old punishment was death, or loss of citizenship, as the case might be. He who went over to the enemy was transfuga or perfuga, and was always put to death. Under the Empire there were various classifications of desertion with their several punishments. (*Dig.* 49, tit. 15, "De Re Militari.")

As the last-mentioned circumstance distinguishes the crime of desertion from the less grave offence of being absent without leave, it becomes necessary, before the conviction of the offender, that evidence should be apparent of such intention. This evidence may be obtained generally from the circumstances under which the deserter is apprehended; for example, he may have been found in a carriage or vessel proceeding to a place so distant as to preclude the possibility of a return to his corps in a reasonable time; or letters may have been found in which an intention to desert is expressed; or some offer may have been made by him of enlisting in another corps, or of entering into some other branch of the service.

The civil courts of law in this country have ever had authority to try offenders accused of desertion; but they have long since ceased to exercise such authority, and they now interfere only in the rare case of an appeal from the decision of the court-martial which is held for the purpose of investigating the charge and

awarding the punishment. The courts-martial exercise, to a certain extent, a discretionary power in proportioning the punishments to the criminality in the accused; and this power is generally considered as more likely to promote the ends of justice than the inflexibility of the law in civil courts, where, since no middle course can be taken between condemnation and acquittal, the criminal frequently escapes through the compassion of the jury, when the punishment which by law must follow a verdict of guilty appears disproportionate to the crime. The leniency which has invariably characterised the sentences of courts-martial, and the custom of not awarding the punishment in its full extent till after a repetition of the crime, sufficiently justifies the confidence reposed in those courts.

The practice of deserting from one regiment or corps, and of enlisting in another, either from caprice or for the sake of a bounty, having been very frequent, a particular clause has been inserted in the Articles of War, in order to prevent this abuse. It declares that any non-commissioned officer or soldier so acting shall be considered as a deserter, and punished accordingly; and that any officer who knowingly enlists such offender shall be cashiered. It is also declared that if any soldier, having committed an offence against military discipline, shall desert to another corps, he may be tried in the latter corps, and punished for such offence; and his desertion may be stated before the court as an aggravation of his guilt. Any officer or soldier who may advise or encourage another to desert is also punishable by a general court-martial.

Absconding from a recruiting party within four days after having received the enlisting money is also considered as desertion; and an apprentice who enlists, representing himself as free, if he afterwards quits the corps, is esteemed a deserter unless he deliver himself up at the expiration of his apprenticeship. Vagrants also, who, pretending to be deserters, give themselves up as such with a view of obtaining money or provisions, are, by a clause of the Mutiny Act, to be considered as soldiers whether enlisted or not.

A non-commissioned officer or soldier who simply absents himself from his corps without leave is exonerated from the graver part of the charge, if any circumstances can be adduced from which it may be inferred that the absence was intended to be only for a short time. Such circumstances are, goods of value being left behind, the occupation in which the absentee is found to be engaged being in its nature temporary, an intention of returning having been expressed, or again, the offender suffering himself to be brought back without resistance. Simple absence without leave is referred to regimental courts-martial merely, and these award the punishment discretionally.

The Mutiny Act authorises general courts-martial to condemn a culprit to death, if his crime should be found to deserve the extreme punishment; in other cases they may sentence him to be transported as a felon, either for life or for a term of years, or to serve in the ranks for life, or for a length of time exceeding that for which he had originally engaged to serve. In some cases, also, corporal punishment is awarded, and an offender may be sentenced to lose the increased pay or the pension to which he would have been entitled if the guilt had not been incurred.

Desertion is justly considered one of the greatest offences that can be committed by any man who has adopted the profession of arms. The officer or soldier who has undertaken to assist in the defence of his country, and steals away from the duties he is called upon to perform, violates a sacred engagement. Whether he withdraw through caprice, or to escape the privations to which the soldier is occasionally exposed, he sets an example of discipline infringed, he deprives the army of his services at a time perhaps when he can with difficulty be replaced; and while he basely seeks his own ease, he throws an additional burthen upon his companions in arms. If he pass over to the enemy, he becomes the vilest of traitors; and, should he escape the retribution which awaits him from his injured country, he must submit to

live dishonoured, an exile from its bosom.

DESPOTISM. [MONARCHY; TYRANT.]

DEVISE. [WILL.]

DIFFEREATION. [MARRIAGE.]

DIFFERENTIAL DUTIES. [TAXATION.]

DIGEST. [JUSTINIAN'S LEGISLATION.]

DIGNITIES. [TITLES OF HONOUR.]

DILAPIDATION, ECCLESIASTICAL. [BENEFICE, p. 349.]

DIOCESE. [BISHOPRIC.]

DIPLOMACY is a term used either to express the art of conducting negotiations and arranging treaties between nations, or the branch of knowledge which regards the principles of that art and the relations of independent states to one another. The word comes from the Greek diploma, which properly signifies any thing doubled or folded, and is more particularly used for a document or writing issued on any more solemn occasion, either by a state or other public body, because such writings, whether on waxen tablets or on any other material, used anciently to be made up in a folded form. The principles of diplomacy are to be found partly in that body of recognized customs and regulations called public or international law, partly in the treaties or special compacts which one state has made with another. The superintendence of the diplomatic relations of a country has been commonly entrusted in modern times to a minister of state, called the Minister for Foreign Affairs, or, as in England, the Secretary the Foreign Affairs. The different persons permanently stationed or occasionally employed abroad, to arrange particular points, to negotiate treaties commercial and general, or to watch over their execution and maintenance, may all be considered as the agents of this superintending authority, and as immediately accountable to it, as well as thence deriving their appointments and instructions. For the rights and duties of the several descriptions of functionaries employed in diplomacy, see the articles AMBASSADOR and CONSUL.

DIPLOMATICS, from the same root as Diplomacy, is a term used to express the acquaintance with ancient documents of a public or political character, and especially of the determination of their authenticity and their age. But the adjective, diplomatic, is usually applied to things or persons connected not with diplomatics, but with diplomacy. Thus by diplomatic proceedings we mean proceedings of diplomacy; and the *corps diplomatique*, or diplomatic body, at any court or seat of government, means the body of foreign agents engaged in diplomacy that are resident there.

Some of the most important works upon the science of diplomatics are the following:—'Ioannis Mabillon de Re Diplomatica,' lib. vii., fol., Paris, 1681-1709, with the 'Supplementum,' fol., Paris, 1704; to which should be added the three treatises of the Jesuit, Barthol. Germon, addressed to Mabillon, 'De Veteribus Regum Francorum Diplomatibus,' 12mo., Paris, 1703, 1706, and 1707:—Dan. Eber. Baringii 'Clavis Diplomatica,' 2 vols. 4to., Hanov., 1754; Ioan. Waltheri 'Lexicon Diplomaticum,' 2 vols. fol., Götting., 1745-7; 'Nouveau Traité de Diplomatique,' par les Bénédictins Tassin, &c., 6 vols. 4to., Paris, 1750-65; 'Historia Diplomatica,' da Scipione Maffei, 4to., Mant., 1727; Io. Heumann von Teutschenbrunn 'Commentarii de Re Diplomatica Imperiali,' 4to., Nurem., 1745; Dom de Vaines, 'Dictionnaire Raisonné de Diplomatique,' 2 vols. 8vo., Paris, 1774; J. C. Gatterer, 'Abriss der Diplomatik,' 8vo., Götting., 1798; and C. T. G. Schoenemann 'Versuch eines vollständigen Systems der allgemeinen besonders ältern Diplomatik,' 8vo., Götting., 1802.

DIRECTOIRE EXE'CUTIF was the name given to the executive power of the French republic by the constitution of the year 3 (1795), which constitution was framed by the moderate party in the National Convention, or Supreme Legislature of France, after the overthrow of Robespierre and his associates. [COMMITTEE OF PUBLIC SAFETY.] By this constitution the legislative power was intrusted to two councils, one of five hundred members, and the other called "des anciens," consisting of 250 members.

The election was graduated: every primary or communal assembly chose an elector, and the electors thus chosen assembled in their respective departments to choose the members for the legislature. Certain property qualifications were requisite for an elector. One-third of the councils was to be renewed every two years. The Council of Elders, so called because the members were required to be at least forty years of age, had the power of refusing its assent to any bill that was sent to it by the other council. The executive power was intrusted to five directors chosen by the Council of Elders out of a list of candidates presented by the Council of Five Hundred. One of the five directors was to be changed every year. The directors had the management of the military force, of the finances, and of the home and foreign departments; and they appointed their ministers of state and other public functionaries. They had large salaries, and a national palace, the Luxembourg, for their residence, and a guard.

The project of this constitution having been laid before the primary assemblies of the people, was approved by them. But by a subsequent law the Convention decreed that two-thirds of the new councils should be chosen out of its own members. This gave rise to much opposition, especially at Paris, where the sections, or district municipalities, rose against the Convention, but were put down by force by Barras and Bonaparte, on the 13th Vendemiaire (4th of October, 1795). After this the new councils were formed, two-thirds being taken out of the members of the Convention, and one-third by new elections from the departments. The councils then chose the five directors, who were Barras, La Réveillière-Lépaux, Rewbell, Letourneur, and Carnot; all of whom, having voted for the death of the king, were considered as bound to the republican cause. On the 25th of October the Convention, after proclaiming the beginning of the government of the laws, and the oblivion of the past, and changing the name of the Place de la Révolution into that of Place de la Concorde, closed its sittings, and the new government was installed. Upon Bonaparte's gaining the ascendancy, the constitution of the year 3 and the Directory were overthrown, after four years' existence. (*Histoire du Directoire Exécutif*, 2 vols. 8vo., Paris, 1802.) The law of the conscription was passed under the administration of the Directory. [CONSCRIPTION.]

DISABILITY is a term used to denote a legal incapacity in a person to inherit lands or enjoy the possession of them, or to take that benefit which otherwise he might have done, or to confer or grant an estate or benefit on another. All persons who are disabled from taking an estate or benefit are incapable of granting or conferring one by any act of their own, but many persons who are incapable of disposing of property may take it either by inheritance or gift.

This legal disability may arise in four ways, which are expressed by the English law in the following terms: By the act of the ancestor; by the act of the party himself; by the act of the law; or by the act of God.

By the act of the ancestor, as where he is attainted of treason or murder, for by attainder his blood is corrupted, and his children are made incapable of inheriting. But by the stat. 3 & 4 Wm. IV. c. 106, § 10, this disability is now confined to the inheriting of lands of which the ancestor is possessed at the time of attainder: in all other cases a descent may be traced through him. [ATTAINDER.]

By the act of the party himself, as where a person is himself attainted, outlawed, &c., or where, by subsequent dealings with his estate, a person has disabled himself from performing a previous engagement, as where a man covenants to grant a lease of lands to one, and, before he has done so, sells them to another.

By the act of law, as when a man, by the act of law, without any default of his own, is disabled, as an alien born.

By the act of God, as in cases of idiotcy, lunacy, &c.; but this last is properly a disability to grant only, and not to take an estate or benefit, for an idiot or lunatic may take a benefit either by deed or will.

There are also other legal disabilities, as infancy, and coverture, or the state of a married woman [WIFE]; but these dis-

abilities are confined to the conferring of interests, for infants and married women are capable of receiving gifts of land or other property.

Married women, acting under and in conformity to powers, since the 3 & 4 Wm. IV. c. 74, by deed executed under the provisions of that statute, may convey lands. Infants, lunatics, and idiots, being trustees, and having no beneficial interest in the property vested in them, are by various statutes enabled to do the necessary legal acts as to such property under the direction of the Court of Chancery.

Particular disabilities also are created by some statutes; as, for instance, Roman Catholics, by the 10 Geo. IV. c. 7 (the Emancipation Act), are disabled from presenting to a benefice; and foreigners (although naturalized) cannot hold offices or take grants of land under the crown. (Cowel's *Interp.*; *Termes de la Ley.*)

DISCOUNT, a sum of money deducted from a debt in consideration of its being paid before the usual or stipulated time. The circumstance on which its fairness is founded is, that the creditor, by receiving his money before it comes due, has the interest of the money during the interval. Consequently he should only receive so much as, put out to interest during the period in question, will realize the amount of his debt at the time when it would have become due. For instance, 100*l.* is to be paid at the end of three years; what should be paid now, interest being 4 per cent.? Here it is evident that if we divide the whole debt into $112\frac{1}{3}$ (or $100+3\times4$) parts, 100 of these parts will make the other 12 in three years (at simple interest), whence the payment now due is the 112th part of 10,000*l.*, or 89*l.* 5*s.* 9*d.* The rule is, n being the number of years (a fraction or number and fraction), r the rate per cent., and D the sum due,

$$\text{Present value} = \frac{100\,\mathrm{D}}{100+nr};$$

$$\text{Discount} = \frac{\mathrm{D}\,nr}{100+nr}.$$

In practice, it is usual not to find the real discount, but to allow interest on the whole debt in the shape of abatement. Thus it would be considered that, in the preceding example, three years' discount upon 100*l.* at 4 per cent. is 12*l.*, or 88*l.* would be considered as the present value.

In transactions which usually proceed on compound interest, as in valuing leases, annuities, &c., the principle of discount is strictly preserved. The present value in the preceding case is, in its most usual form,

$$\frac{\mathrm{D}}{(1+\varrho)^n}, \text{ and the discount } \mathrm{D}-\frac{\mathrm{D}}{(1+\varrho)^n};$$

where ϱ is the rate per pound (not per cent.: thus it is ·04 for 4 per cent.). But recourse is usually had to the tables of present values which accompany all works on annuities or compound interest.

The name of discount is also applied to certain trade allowances upon the nominal prices of goods. In some branches of trade these allowances vary according to the circumstances which affect the markets, and what is called discount is in fact occasioned by fluctuations in prices which it is thought convenient to maintain nominally at unvarying rates. This system is practised in some branches of wholesale haberdashery business, and we have now before us a list of prices furnished to his customers by a manufacturer of tools at Sheffield, in which the nominal price of each article is continued the same at which it has stood for many years, while to every different species of tool there is applied a different and a fluctuating rate of discount, this fluctuation constituting in fact a difference of price between one period and another: the rates of discount in this list vary from 5 to 40 per cent. upon the nominal prices of the different articles.

The term discount is also employed to signify other mercantile allowances, such for example as the abatement of 12 per cent. made upon the balances which underwriters, or insurers of sea risks, receive at the end of the year from the brokers by whom the insurances have been effected. The word discount is further used, in contradistinction to premium, to denote the diminution in value of securities which are sold according to a fixed nominal value, or according to the price they may have originally cost.

If, for example, a share in a canal company upon which 100*l.* has been paid is sold in the market for 98*l.*, the value of the share is stated to be at 2 per cent. discount.

DISCOUNT BROKER. [BROKER.]

DISCOVERY. [EVIDENCE.]

DISPENSATION. [BENEFICE.]

DISSEISIN. [SEISIN.]

DISTRESS, "districtio," in the jurisprudence of the Middle Ages, denotes legal compulsion generally, whether ecclesiastical or civil. One mode of compulsion extensively adopted among the nations of Teutonic origin was the taking possession of the whole or a part of the property of the offender or defaulter, and withholding it from him until the requirements of the law had been complied with. This species of distress was called "naam," from nyman, nehmen, to take—a verb common to the Anglo-Saxon, German, and other cognate languages. The modern distress is the "naam," restricted in the taking of *personal* chattels; and in its most simple form it may be stated to be—the taking of personal chattels out of the possession of an alleged defaulter or wrong-doer for the purpose of compelling him, through the inconvenience resulting from the withholding of such personal chattels, to perform the act in respect of which he is a defaulter, or to make compensation for the wrong which he has committed.

Some rights to which the law annexes the remedy by distress, have been considered too important to be left to the protection afforded by the mere detention of the *distress* (by which term the thing taken is also designated), and more efficacious means of dealing with it have been introduced; and in certain cases a sale of the property taken by way of distress is allowed, if, after a certain interval, the party distrained upon continues to be unwilling or unable to do the act required.

Distresses are either for some duty omitted, some default or nonfeasance,—or they are in respect of some wrongful act done by the distrainee. The subject of distress is one of great extent, and in the English law involves a great number of particular cases. Under the head of Distress for Omissions, the most important among the feudal duties for which a distress may be taken is Rent Rent, in its original and still most usual form, is a payment agreed to be made by the tenant to his landlord as an equivalent or a compensation for the occupation of land or a house. Such rent is denominated rent-service. It comes in lieu of and represents the profits of the land granted or demised, and is therefore said to *issue* out of the land. To rent-service the law annexes the power of distress, although there may be no agreement between the parties as to distress. But a rent reserved upon a grant or demise ceases to be a rent-service if it be separated from the ultimate property in the land, generally called the reversion. Thus, if the owner of land in fee demises it for a term of years, reserving rent, and afterwards assigns the rent to a stranger, retaining the reversion, or grants the reversion, retaining the rent, the rent being disconnected from the reversion is considered as a branch severed from the trunk, and is called a dry rent or rent-seck, to which the common law annexed no power of distress. In like manner, if the owner of the land, without parting with the land, grants to another a rent out of the land, the grantee having no reversion had only a rent-seck, unless the grant expressly created a power of distress, in which case the rent would be a rent-charge. But now, by statute 4 Geo. II. c. 28, § 5, the like remedy by distress is given in cases of rent-seck, as in the case of rent reserved upon lease.

All rents, though distinguished by a variety of names derived from some particular circumstance attached to them, are resolvable into Rent-service, Rent-seck, or Rent-charge, and there may now be a distress for every species of rent, though a practical difference still subsists as to the mode of dealing with distresses taken for the one or for the other.

There may also be distress for Heriots and Tolls.

There is also Distress for Damage done, which is called Distress for Damage-feasant. Cattle or dead chattels may be taken and be detained to compel the payment of a reasonable sum of money by

way of satisfaction for the injury sustained from such cattle or dead chattels being wrongfully upon property in the occupation of the party taking them, and doing damage there, either by acts of spoliation or merely by incumbering such property. This is called a distress of things taken damage-feasant (doing damage).

The occupier of land is allowed not only to defend himself from damage by driving out or removing the cattle, but also to detain the thing which did the injury till compensation be made for the trespass. Upon referring to Spelman and Ducange, it will be seen that a similar practice obtained on the Continent amongst the Angli, Werini, Ripuarii, and Burgundians.

The right to distrain damage-feasant is given to all persons who have an immediate possessory interest in the soil or in its produce, and whose rights are therefore invaded by such wrongful intrusion. Thus, not only the occupier of the land trespassed upon, but other persons entitled to share in the present use of the land or of the produce, as commoners, &c., may distrain. But though a commoner may always distrain cattle, &c. of a stranger found upon the common, it would seem that he cannot, unless authorized by a special custom, distrain the cattle, &c. of the person who has the actual possession of the soil. Nor can he distrain the cattle of another commoner who has stocked beyond his proportion, unless the common be stinted, *i. e.* unless the proportion be limited to a certain number. In the more ordinary case of rights of common in respect of all the cattle which the commoner's enclosed land can support during the winter, cattle exceeding the proportion cannot be distrained.

Cattle found trespassing may be distrained damage-feasant, although they have come upon the land without the knowledge of their owner and even through the wrongful act of a stranger. But if they are there by the default of the occupier of the land, as by his neglecting to repair his fences, or to shut his gates against a road or a close in which the cattle lawfully were, such negligent occupier cannot distrain unless the owner of the cattle suffer them to remain on the land after notice and time given to him to remove them; and if cattle trespass on one day and go off before they are distrained, and are taken trespassing on the same land on another day, they can be detained only for the damage done upon the second day.

Cattle, if once off the land upon which they have trespassed, though driven off for the purpose of eluding a distress, cannot be taken even upon immediate pursuit. The occupier must get satisfaction for the damage by action.

Things necessary for the carrying on of trade, as tools and utensils,—or for the maintenance of tillage, as implements of husbandry, beasts of the plough, and sheep as requisite to manure the land, are privileged from Distress whilst other sufficient distress can be found. But this rule does not extend to a distress for a toll or duty arising in respect of the thing taken as a distress, or of things connected with it; as a distress of two sheep for market-toll claimed in respect of the whole flock, or of the anchor of a ship for port-duty due in respect of such ship.

For the protection of tradesmen and their employers, property of which the distrainee has obtained the possession with a view to some service to be performed upon it by him in the way of his trade, is absolutely privileged from distress; as a horse standing in a smith's shop to be shod, or put up at an inn, or cloth sent to a tailor's shop to be made into clothes, or corn sent to a mill or market to be ground or sold. The goods of a guest at an inn are privileged from distress; but this exemption does not extend to the case of a chariot standing in the coach-house of a livery-stable keeper; nor does it protect goods on other premises belonging to the inn but at a distance from it; and even within the inn itself the exemption does not extend to the goods of a person dwelling there as a tenant rather than a guest. Goods in the hands of a factor for sale are privileged from distress; and also goods consigned for sale, landed at a wharf, and placed in the wharfinger's warehouse.

Beasts of the plough may be distrained where no other distress can be found;

and it is sufficient if the distrainor use diligence to find some other distress. A distress is not said to be found unless it be accessible to the party entitled to distrain, by the doors of the house being open, or the gates of the fields unlocked. Beasts of the plough may be distrained upon where the only other sufficient distress consists of growing crops, which though now subjected to distress, are not, as they cannot be sold until ripe, immediately available to the landlord.

A temporary privilege from distress arises when the chattel is in actual use, as an axe with which a man is cutting wood, or a horse on which a man is riding. Implements in trade, as frames for knitting, weaving, &c., are absolutely privileged from distress whilst they are in actual use, otherwise they may be distrained upon if no other sufficient distress can be found.

Rent is not due until the last moment of the day on which it is made payable. No distress therefore can be taken for it until the following day.

A distress for rent or other duties or services can be taken only between sunrise and sunset; but cattle or goods found damage-feasant may be distrained at any time of the day or night.

No distress can be taken for more than six years' arrears of rent; nor can any rent be claimed where non-payment has been acquiesced in for twenty years (3 and 4 Wm. IV. c. 27).

A distress for rent or other service could at common law be taken only upon the land charged therewith, and out of which such rent or services were said to issue.

But this restriction did not apply to the king, who might distrain upon any lands which were in the actual occupation of his tenant, either at the time of the distress or when the rent became due.

The assumption of a similar power by other lords was considered oppressive, and it was ordained by the statute of Marlbridge, that no one should make distress for any cause out of his fee, except the king and his ministers thereunto specially authorized. The privilege of distraining in all lands occupied by the party chargeable, is communicated by 22 Car. II. c. 6; 26 Geo. III. c. 87; 30 Geo. III. c. 50; and 34 Geo. III. c. 75, to the purchasers of certain crown rents.

Under 8 Ann. c. 14, and 11 Geo. II. c. 19, where a lessee fraudulently or clandestinely carries off his goods in order to prevent a distress, the landlord may within five days afterwards distrain them as if they had still continued on the demised premises; provided they have not been (*bonâ fide*) sold for a valuable consideration.

And by the 7th section of the latter statute, where any goods fraudulently and clandestinely carried away by any tenant or lessee, or any person aiding therein, shall be put in any house or other place, locked up or otherwise secured, so as to prevent such goods from being distrained for rent, the landlord or his bailiff may, in the day time, with the assistance of the constable or peace officer (and in case of a dwelling-house, oath being also first made of a reasonable ground to suspect that such goods are therein), break open and enter into such house or place, and take such goods, for the arrears of rent, as he or they might have done if such goods had been put in an open field or place.

To entitle the landlord to follow the goods, the removal must have taken place after the rent became due, and for the purpose of eluding a distress. It is not however necessary that a distress should be in progress, or even contemplated: nor need the removal be clandestine. Although the goods be removed openly, yet if goods sufficient to satisfy the arrears are not left upon the premises, and the landlord is turned over to the barren remedy by action, the removal is fraudulent and the provisions of these statutes may be resorted to. These provisions apply to the goods of the tenant only. The goods of a stranger or of an undertenant may be removed at any time before they are actually distrained upon, and cannot be followed.

The landlord may enter a house to distrain if the outer door be open, although there be other sufficient goods out of the house. It is not lawful to break open outer doors or gates; but if the outer door be open, an inner door may be forced.

If the landlord, having distrained, is forcibly expelled, he may break open outer doors or gates in order to retake the distress. If a window be open, a distress within reach may be taken out at it.

At common law a distress might be taken for rent in a street or other highway being within the land demised. But now, by the statute of Marlbridge, private persons are forbidden to take distresses in the highway. This statute applies only to distresses for rent or for services, and not to toll. Nor does the statute make the distress absolutely void; for though the tenant may lawfully rescue cattle distrained in the highway, or may bring his action on the case upon the statute, yet if he brings trespass or replevin, it seems to be no answer to a justification or an avowry made in respect of the rent.

A distress may be made either by the party himself or his agent, and as distresses in manors were commonly made by the bailiff of the manor, any agent authorized to distrain is called a bailiff. The authority given to the bailiff is usually in writing, and is then called a warrant of distress; but a verbal authority, and even the subsequent adoption of the act by the party on whose behalf the distress is made, is sufficient. In order that the distrainee may know what is included in the distress, an inventory of the goods should be delivered, accompanied, in the case of a distress for rent, by a notice stating the object of the distress, and informing the tenant that unless the rent and charges be paid within five days, the goods and chattels will be sold according to law. This notice is required by 2 W. & M. sess. i. c. 5, § 2, which enacts, "where any goods shall be distrained for rent due upon any demise, lease, or contract, and the tenant or owner of the goods shall not, within five days next after such distress taken, and notice thereof with the cause of such taking, left at the chief mansion house, or other most notorious place on the premises, replevy the same, with sufficient security to be given to the sheriff,—that after such distress and notice and expiration of the five days, the person distraining shall and may, with the sheriff or under-sheriff, or with the constable of the place, cause the goods to be appraised by two sworn appraisers, and after such appraisement may sell the goods distrained towards satisfaction of the rent, and of the charges of distress, appraisement, and sale, leaving any surplus in the hands of the sheriff, under-sheriff, or constable, for the owner's use."

At common law, goods distrained were, within a reasonable time, to be removed to and confined in an enclosure called a pound, which is either a pound covert, *i. e.* a complete enclosure, or a pound overt, an enclosure sufficiently open to enable the owner to see, and if necessary, to feed the distress, the former being proper for goods easily removed or injured, the latter for cattle; and by 5 & 6 Will. IV. c. 59, § 4, persons impounding cattle or animals in a common open or close pound, or in enclosed ground, are to supply them with food, &c., the value of which they may recover from the owner. By 11 Geo. II. c. 19, § 10, goods distrained for any kind of rent may be impounded on any part of the tenant's ground, to remain there five days, at the expiration of which time they are to be sold, unless sooner replevied. The landlord is not however bound to remove the goods immediately after the expiration of the five days; he is allowed a reasonable time for selling. After the lapse of a reasonable time he is a trespasser if he retain the goods on the premises without the express assent of the tenant, which assent is generally given in writing.

The 1 & 2 Ph. & M. c. 12, requires that no distress of cattle be removed out of the hundred, except to a pound overt in the same county, not above three miles from the place where such distress is taken, and that no cattle or other goods distrained at one time be impounded in several places, whereby the owner would be obliged to sue out several replevins.

The 2 Will. & Mary, sess. 1, c. 5, § 3, directs that corn, grain, or hay distrained be not removed, to the damage of the owner, out of the place where the same shall be found or seized, but be kept there until replevied or sold; and 11

Geo. II. c. 19, which gives a distress for rent-service upon growing crops, directs, §§ 8 and 9, that they shall be cut, gathered, and laid up, when ripe, in the barn or other proper place on such premises, or if none, then in some other barn, &c., to be procured for that purpose, and as near as may be to the premises, giving notice within one week of the place where such crops are deposited; and if the tenant, his executors, &c., at any time before the crops distrained are ripe and cut, pay or tender the rent, costs, and charges, the goods distrained are to be restored. In all other cases, if the rent or other duty be paid, or performed, or tendered to be paid or performed before the distress is impounded, a subsequent detainer is unlawful, and a subsequent impounding or driving to the pound is a trespass.

The statutes authorising the sale of distresses extend only to those made for rent. At common law distresses cannot in general be either sold or used for the benefit of the party distraining. But a distress for fines and amerciaments in a court leet, or for other purposes of public benefit, may be sold; and a special custom or prescription will warrant the sale of a distress in cases where the public has no immediate interest.

A distress made by a party who has no right to distrain, or made for rent or other service which the party offers to pay or perform, or made in the public highway, or upon goods privileged from distress either absolutely or temporarily, is called a *wrongful distress*. Where no right to distrain exists, or where the rent or duty is tendered at the time of the distress, the owner of the goods may rescue them or take them forcibly out of the possession of the distrainer, or bring either an action of replevin, or of trespass. In replevin, the cattle or goods taken are to be redelivered to the owner upon his giving security by a replevin bond, for returning them to the distrainer, in case a return shall be awarded by the court; and therefore in this action damages are recovered only for the intermediate detention and the costs of the replevin bond. In the action of trespass the plaintiff recovers damages to the full value of the goods; because upon such recovery, the property in the goods is transferred to the defendant.

The 2 W. & M. sess. i. c. 5, § 5, provides "that in case of any distress and sale for rent pretended to be due, where in truth no rent is due, the owner of the goods so distrained and sold may, by action of trespass or upon the case, recover double the value of such goods, with full costs of suit."

Whether goods are rightfully or wrongfully distrained, to take them out of the pound is a trespass and a public offence. The proceeding by action is a more prudent course than making a rescue, even before an impounding, where any doubt exists as to the lawfulness of the distress. Independently of the danger of provoking a breach of the peace by the rescuer's thus taking the law into his own hands, he will be liable to an action for the injury sustained by the distrainor by the loss of the security of the distress, should the distress ultimately turn out to be lawful; and in such action, as well as in the action for poundbreach, the rescuer will be liable, under 2 W. & M. sess. i. c. 5, § 4, to the payment of treble damages and treble costs.

A distress for more rent, or greater services than are due, or where the value of the property taken is visibly disproportionate to the rent or other appreciable service, is called an *excessive distress*, for which the party aggrieved is entitled to recover compensation in an action on the case; but he cannot rescue, nor can he replevy or bring trespass.

Upon a distress rightfully taken being afterwards irregularly conducted, the subsequent irregularity at common law made the whole proceeding wrongful, and the party was said to be a trespasser "ab initio." But now, by 11 Geo. II. c. 19, where distress is made for rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining or his agent, the distress itself is not to be deemed unlawful nor the party making it a trespasser; but the person aggrieved by such irregularity, &c. may recover satisfaction for the special damage sustained. (Bradby *On Distresses;* Gilbert, *Distr.;* Bracton; Fleta; Coke

upon Littleton; Bacon, Comyns, and Viner's *Abridgments;* Willes's *Reports;* 6 Nevile and Mann, 606.)

DIVIDEND, in commerce, is a word which has two distinct meanings. In its more general employment it is understood to express the money which is divided, *pro rata,* among the creditors of abankrupt trader, out of the amount realised from his assets. [BANKRUPT.]

The other meaning attached to the word dividend is not so appropriate as that which has just been explained. It is used to signify the half-yearly payments of the perpetual and terminable annuities which constitute the public debt of the country, and does not therefore strictly express that which the word is made to imply. The payment of those so-called dividends is managed on the part of the government by the Bank of England, which receives a compensation from the public for the trouble and expense attending the employment. The exact number of individuals who are entitled to receive these half-yearly payments is not known, as the number of annuitants is not nearly so great as the number of distinct warrants, because many individuals are possessed of annuities due at the same periods of the year, which are included under different heads or accounts in the books of the bank, as bearing different rates of interest, or being otherwise under different circumstances; and besides, many persons hold annuities which are payable at both half-yearly periods. It is certain, however, that the greater part of the public creditors are entitled to annuities for only small sums, more than nine-tenths of the payments being for sums not exceeding 100*l.*, and nearly one-half for sums not exceeding 10*l.* The number of warrants issued for the payment of dividends at each quarter of the year ending 5th January, 1843, was as follows:—5th April, 89,560; 5th July, 191,980; 10th October, 89,379; 5th January, 192,970.

DIVISION OF EMPLOYMENTS, in political economy, is an important agent in increasing the productiveness of labour. It is by labour alone that wealth is produced. It is a law of man's nature that "by the sweat of his face he shall eat bread;" and in return for his labour he acquires various sources of enjoyment. The ingenuity with which he has been endowed, and the hard necessities of his condition, lead him to discover the most effective means of applying his labour to whatever objects he may be seeking to attain. He desires first to work no more than is necessary, and secondly to obtain the largest return—the most abundant enjoyment, for his industry. He soon finds that his own unaided labour will scarcely provide for him the barest necessaries, and that ease or enjoyment is unattainable. Thus instead of each man labouring separately, and independently of all others, many men combine together for securing the various objects of life, by means of their joint labour; and this combination of labour leads to division of employments. Labour is naturally exerted in these two forms in the very earliest stages of society. The first pair whom God's ordinances and their own instinct united, must have combined for the support of themselves and their common family, and diversity of sex alone must have produced distinct employments. Among savages the man engages in the chase, for which he has a natural predilection, and for which his strength adapts him, while his mate rears their children and executes those functions which are suited to her sex, but which are as conducive to the comfort of both as if both performed them. In this manner a division of employments naturally arises, and each family affords an example of its origin and character.

This combination for a common object, succeeded by a division of employments, pervades every process of human industry, and increases in variety and complexity with the growth of civilization. One of the earliest forms of industry is that of fishing, and none, perhaps, exemplifies more aptly the mode in which labour is necessarily applied to the purposes of life. A man desirous of building a fishing-boat may cut down a tree, without any assistance from others, and may even hew it into shape: but if it be larger than a mere canoe he cannot, by his own strength, remove it from the spot on which the tree had fallen, and launch it upon the sea. To effect this, others must combine

their strength with his. To manage a boat the labour of more than one man is ordinarily required, and the larger the boat the greater must be the number who combine to navigate it. If they paddle or row it, their labour is simply combined for one purpose and in one manner, except that one, instead of rowing, may probably steer the boat. As the art of navigation improves and its objects become multiplied, in addition to a more extensive combination of men in pursuit of the same objects, a diversity of employments ensues. In a deep-sea fishery, some attend to the nets, others to the sails; and on their return to land, some arrange the nets to dry and repair them, while others are engaged in disposing of the fish.

From these illustrations it is evident that the cause of a division of employments is to be sought in the nature and circumstances of man. It is not the result of extraordinary foresight, but is suggested by the most common exigencies of life: its convenience is obvious, but the feeling which prompts men to adopt it is spontaneous and, as it were, intuitive. It is a social necessity, and the very foundation of any social system whatever, yet it is practised almost unconsciously by the greater part of mankind. Its existence, however, lies so open to observation that it is scarcely to be ranked as a discovery of political economy; but that science, having noted the facts of a combination of labour and a division of employments, explains their uses and results; and in pursuing these inquiries it developes some of the most important principles connected with the production and distribution of wealth. To these inquiries we must now devote our attention.

As labour is the lot of man, it is desirable that his labour should be as productive as possible, in order that the sum of his enjoyments should exceed that of his endurance. This result is attained by several men combining their labour for one object, and pursuing different employments for their reciprocal benefit, instead of each man labouring independently for himself and employing himself in the same manner as all other men. A division of employments, therefore, is not only a natural incident of labour, but is an important auxiliary of human enjoyment. The means by which it adds to the efficacy of labour are described by Adam Smith to be—1st. an "increase of dexterity in every particular workman;" 2ndly. "the saving of the time which is commonly lost in passing from one species of work to another;" and, 3rdly, "the invention of a great number of machines which facilitate and abridge labour, and enable one man to do the work of many:" to which may be added, 4thly, the separation which it causes between labour and the direction of labour; 5thly, the power which it gives of using machinery effectually, when invented; 6thly, the opportunities of exchange which it affords and the means of availing ourselves of the enjoyments arising from the natural capabilities of the soil, climate, situation, or mineral productions of different parts of the world, and of the peculiar aptitude of their inhabitants for various kinds of industry.

1. The superior dexterity of workmen engaged exclusively in one occupation is universally known. "Use is second nature," and when a man has been long accustomed to a particular employment, not only has he acquired great dexterity, but his mind appears to be endowed with faculties specially adapted to his business. The jockey seems to have been born for the saddle; the sailor for the ship: both are active, intelligent, dexterous: but fancy their occupations exchanged or combined! the sailor in the saddle, the jockey at the helm; or both alternately riding the favourite horse at Newmarket and furling the top-gallants of a three-decker at Spithead! The constant exercise of the faculties in any act or business gives them an aptitude for it, which to others is a matter of astonishment. The eye and the hand perform their offices with such precision and rapidity, that their work seems spontaneous, as it were, and independent of the will of the workman. Without deliberation, almost without care, the business is done; and done better than others could do it with the greatest pains. All processes of art and manufacture, and the daily experience of all

men, confirm this statement as an unquestionable fact (Babbage, *Economy of Machinery and Manufactures*). The advantages of peculiar skill are that men can work better and faster, that the products of their labour are more valuable and more abundant, and that their contributions to the general stock of the world's enjoyments are multiplied. By following out these advantages through all their relations, they will be found to be the primary source of wealth; and, in a moral point of view, the main cause of social progress and of the development of the highest faculties of man.

2. "The saving of time which is commonly lost in passing from one species of work to another" enables a man who is constantly engaged in one process to perform more work than he would have been able to get through in the course of a day, if he had been required to change his employment. For this reason, as well as on account of his skill, a division of employments makes his labour more productive.

3. The invention of tools and machinery is the most effective auxiliary of labour, and it is necessarily promoted by a division of employments. Those who are constantly attending to one business or description of labour must become best acquainted with its requirements—their observation and experience are concentrated upon it—their interest urges them to facilitate their own exertions. How many inventions are due to workmen employed in manual labour the history of the steam-engine and of the cotton manufacture will furnish examples: but it is not in the case of workmen alone that division of employments facilitates invention. Their employers also have their whole minds bent upon improving their business; and amidst the multiplication of trades arise engineers and machinists, whose sole business it is to construct, improve, and invent machinery, aided by all the lights of theoretical science. And this leads us to the fourth advantage of a division of employments.

4. If all men were doing the same thing, and working for themselves unaided by others, their condition would never be improved; but by following particular occupations those who exert most skill and industry produce more than they require for their own subsistence, and reserve a fund for the employment of others. [CAPITAL.] And thus there grows up from the midst of the people a class of employers who direct the labour of others. Until labour is so directed and maintained by the previous accumulation of capital, it is comparatively ineffectual; and while a division of employments is a powerful agent in producing capital, the latter, in its turn, facilitates a further subdivision. Without it, indeed, a system of division can only be carried out imperfectly and to a very small extent. The growth of capital also gives to many men the glorious privilege of leisure, exempts them from the necessity of labour, and leaves them free to study, to reflect, to observe, to reason and investigate. From this class arise men of science and of letters—philosophers, statesmen, historians, poets. And even with these the apportionment of a peculiar province gives power to their minds, and expands their knowledge. Their natural talents are developed, and their aptitude for particular pursuits becomes as conspicuous in intellectual industry as that of other men in manual operations.

5. Adam Smith speaks of the importance of a division of employments as leading to the invention of machinery, but passes over its utility in using machinery effectually, when invented. Every part of a large machine requires workmen whose sole business it is to work in unison with its peculiar movement. So distinct are these various processes—so diverse their character—that in all large manufactures there is an extensive vocabulary of names by which operatives working in the very same factory are distinguished.* Without such a subdivision of peculiar employments the most ingenious machinery would be useless: and thus while machinery multiplies distinct operations of labour, they are, in their turn, essential to its efficacy.

* A curious example will be found in the glossary annexed to the 'Report of the Commission on Frame-Work Knitters,' 1845: and numerous others in the Occupation Abstract of the Census Commissioners—counties of Lancaster, Leicester, West Riding of Yorkshire, &c.

6. Adam Smith assigns the origin of a division of employments to the "trucking disposition" of mankind—to their "propensity to truck, barter, and exchange one thing for another" (book i. ch. ii.). This love of barter, however, is only a secondary cause: men have no natural taste for it; but use it as a means of obtaining the various objects which they desire. If they could obtain them without the trouble of barter, they would unquestionably not follow barter as an amusement, any more than they would work if they could get what they wanted without labour. So far, then, from the trucking disposition of men being the cause of a division of employments, it would appear that a division of employments is rather the proximate cause of commerce. For if all men worked in the same manner and produced the same things, there would be nothing to exchange: but as soon as men learn to devote themselves to the production of one commodity, the whole of which they cannot consume, they must exchange the produce of their labour with others, who have been producing objects which they desire to possess. This is an intelligible origin of barter and commerce—consistent with the natural propensities of mankind, and not requiring for its support the strained hypothesis that men have an innate disposition to truck. But a division of employments, like barter, is itself but a secondary cause; and both alike must ultimately be referred to the one original cause of all forms of industry—the desire of mankind to possess various enjoyments which are only to be gained by labour.

This would appear to be the natural course of social progress. First, a man applies himself to a particular business because he has facilities for following it. One man lives by the sea and is a fisherman: another lives near the forest and hunts game. Each could obtain more of this particular food than he requires for his own use, and may desire some little variety. Under these circumstances it is very natural that they should effect exchanges with each other—not for the mere love of barter—but for the love of food. But such an exchange could not be made between two men who both lived by fishing—nor between two others who both lived by hunting: for under such circumstances neither party would have anything to offer but that of which the other already had enough. It is perfectly true that without barter no extensive division of employments can exist: but it is clear that barter is the immediate effect rather than the cause of such division. Of the influence of commerce upon the division of employments we shall have to speak presently; but, in this place, it is sufficient to show that the production of different commodities beyond the immediate wants of those who produce them enables men to barter, by giving them something to offer in exchange: and, that afterwards, the advantages derived from barter are an encouragement to further production of the same kind.

When this state of things has been once established, men avail themselves of all the natural advantages of their several positions, and apply themselves to the production of those commodities for which they have peculiar facilities. In one country minerals can be drawn from the bowels of the earth in unlimited abundance: in another the fruits of the earth teem upon its surface—fostered by a genial climate and a fertile soil. The inhabitants of these countries naturally seek to develop the resources of the earth which are within their reach. They labour effectively and produce abundance of their particular commodities, which they give in exchange for other things which they cannot produce themselves, but which they desire to enjoy. And thus a division of employments, by the aid of an extended commerce, distributes over the whole world, the advantages of soil, climate, situation, and mineral productions, obtained by the experience and skill of men who have adapted their talents to the circumstances of each country.

Having thus hastily enumerated the several ways in which a division of employments adds to the efficacy of human labour, and increases the enjoyments of men, let us inquire in what manner it is restrained and limited. It may be collected from several of the preceding remarks, that the power of distributing men

into particular employments must be limited by the extent of the market in which the produce of their labour may be exchanged. When there are no means of exchanging, men must provide everything for themselves that they require; and there is no further division of employments than that which necessarily takes place in families, and in the most simple forms of industry. So in every degree in which the situation and circumstances of men give facilities of exchange, do particular employments become assigned to individuals. A village draper sells all kinds of drapery, together with hats, shoes, coats, smock-frocks: nay, in some villages there is but one shop, in which nearly every kind of trade is carried on. In a populous city, on the other hand, trades are almost indefinitely subdivided. And why is this? Solely because of the extent of the market. In the one case, if a man sold nothing but hats, he could not gain a livelihood, and therefore he sells coats, smock-frocks, shoes, and all kinds of drapery—everything, in fact, which the people round about him are likely to buy. In the other case, there is so large a demand for hats, that a man can gain a better livelihood by the exclusive sale of them, than by a heterogeneous trade like that of the village shopkeeper.

But while, by means of exchange, employments are thus subdivided, the labour of many men is most efficiently combined in producing particular results. The combinations of industry for one object are often truly wonderful, while the employments of those who are really co-operating with one another are so distinct, that they are wholly unconscious of any combination at all; nor is their combination at once perceptible to others. If you ask a man "who made his coat?"—he will naturally answer "his tailor." But ask him to enumerate the persons who had contributed to its production, and he will pause long before he attempts any answer, however incomplete. He will be reminded of the grazier, the shepherd, the wool-salesman, the various workmen in the cloth factory—the button-makers, the manufacturers of silk, and thread, and needles: but still the catalogue will be imperfect. In producing the raw materials, and in conveying, selling, and manufacturing them, the diversity of occupations is extraordinarily great. Each man attends to his own business, and scarcely thinks of its relations to the business of other people; and yet all are co-operating in the most effectual manner, for the most perfect and economical manufacture of this finished work of varied art.

The general operation of the principles of a combination of labour and division of employments has now been sufficiently explained, so far as it relates to the efficiency of human industry. Of its effects upon the distribution of wealth (another important branch of political economy) no more need be said, than that by multiplying the modes in which industry is made productive, it is the main cause of the various grades of society which exist in all civilized countries. The different employments of men determine their social position as labourers or employers of labour; and the wealth arising from the effective employment of labour is distributed, through the several classes, as rent, profits, and wages.

It has been urged as an objection to an extended division of employments, that it unfits men for any change of business which altered circumstances may require; and that, on that account, great misery is caused when the demand for any particular kind of labour is reduced. Of this position the hand-loom weavers of England and Scotland are a familiar example, who are said to have been thrown out of employment by the extension of machinery. That they have been reduced to great distress is certain; but in their employment there was nothing to unfit them from engaging in power-loom weaving. On the contrary, the transition from one employment to the other would have been perfectly natural; but they preferred their independent life to the discipline of a factory, and for that and other reasons persisted in continuing in their old trade. In the mean time thousands of agricultural labourers and their families, whose occupations had been totally dissimilar, flocked into the manufacturing districts, and readily learned their new business. This

example, therefore, instead of sustaining the objection, proves that a division of employments does not disable men, so much as might be expected, from transferring their labour to other departments of industry, whenever a sufficient inducement attracts them. But any interruption or change in the ordinary course of industry is necessarily productive of temporary suffering to the working classes, from whatever cause it may arise; and an alteration in the forms of applying labour is but one out of many such causes. Yet much as this evil must be deplored, it is a satisfaction to know that it is only occasional, temporary, and partial in its operation, while the permanent welfare of mankind is promoted by all those means which render industry most productive and multiply the sources of human enjoyment.

Another objection to a minute subdivision of employments is, that it reduces vast masses of men to the condition of organized machines, uses them like tools, and uses them as such merely because machines have not yet been invented to do their work. From these facts, which are, to a certain extent, undeniable, it is inferred that the moral and intellectual character of men is degraded. This inference, however, is not supported by experience. Agricultural employments are less subdivided than trades and manufactures; but no one will contend that the farm labourer is ordinarily more intelligent than the operative, nor that his morals are decidedly superior. In comparing their relative condition, we shall be led into error if we confine our attention to the influence of a division of employments. In the lower departments of labour the work is rarely of a kind to enlarge the understanding, whether it consist of a combination of several occupations or of one only; and in either case the greater part of a man's time is engaged in his daily work. It is, therefore, to the circumstances by which he is surrounded, rather than to the nature of his work itself, that we must generally refer his condition. In thinly peopled countries there can be comparatively little division of employments, and in populous cities the principle of division, for reasons already explained, is carried very far. In the one case the intercourse of persons with each other is very confined, and is enlivened with scarcely any variety: in the other case persons are crowded together, and brought into continual intercourse. These opposite circumstances produce different results for good and for evil. The intelligence of mankind is unquestionably increased by extended intercourse with one another: their morals, at the same time, are more liable to corruption. In large cities they are exposed to more temptations—they are under less restraint; and, above all, they have, almost universally, higher wages, which enable them to indulge their propensities more freely. Much of the intellectual disparity of rural and town populations might be removed by an efficient system of education, by which men would be better qualified to observe and reflect upon the objects by which they may be surrounded. And great would be the moral influence of education in rendering high wages innocuous, by offering liberal sources of recreation to the operative, more attractive than the temptations of vice.

But to all objections it may be answered, that a division of employments is an imperative law of civilization. So overpowering is the necessity of a combination of labour with a distribution of distinct employments, for the production of wealth, that Mr. Wakefield has ingeniously ascribed to it the origin of slavery, in countries where labour has not been accessible by means of wages. (See Note to Adam Smith, book i. ch. 1.) Where land is abundant, families naturally scatter themselves over it, and provide for themselves nearly all that they want. More than they want they do not produce, as there is no market; and the growth of capital, under such circumstances, is impossible. One man has no inducement to offer to another for his labour; and thus the strongest men, with dominant wills, finding the necessity of combined industry for any extensive production, wage war upon their weaker neighbours and compel them to work by force. But where land becomes scarce and dear, men are forced into other employments distinct from agriculture; capital grows,

wages are offered as an inducement to work, and the more wealthy and populous a country becomes, the more extensive must be the distribution of separate employments. To object to a division of employments, therefore, is no less than to object to civilization altogether; for the two conditions are inseparable. It is deeply to be lamented that many evils have hitherto clung to the progress of civilization, which are not its necessary accompaniments. Many of them may be referred to the slow growth of political science, and might be corrected by the application of sound principles of government; many may be attributed to the neglect of the religious and moral culture of an *increasing* population: but short indeed must be the sight of any man who would seek to correct them by applying to a civilized state the rude expedients of barbarism.

(Adam Smith's *Wealth of Nations*, book i. chapters 1, 2, 3, with Notes by M'Culloch and Wakefield; M'Culloch's *Principles of Political Economy*, &c.)

DIVORCE (from the Latin word divórtium, a divertendo, from diverting or separating), the legal separation of husband and wife. In England, divorce is of two kinds: à mensâ et thoro, from bed and board; and à vinculo matrimonii, from the bond of the marriage. The divorce à mensâ et thoro is pronounced by the spiritual court for causes arising subsequent to the marriage, as for adultery, cruelty, &c.: it does not dissolve the marriage, and the parties cannot contract another marriage. [BIGAMY.] In fact it is equivalent only to a separation.

The divorce à vinculo matrimonii can be obtained in the spiritual courts for causes only existing before the marriage, as precontract, consanguinity, impotency, &c. This divorce declares the marriage to have been null and void, the issue begotten between the parties are bastardized, and the parties themselves are at liberty to contract marriage with others.

From the curious document preserved by Selden ('Uxor Ebraica,' c. xxx., vol. iii. 845, folio ed. of his Works), whereby John de Cameys, in the reign of Edward I., transferred his wife and her property to William Paynel; and also, from the reference to the laws of Howel the Good, at the end of this article, it would seem that in the early periods of English law a divorce might be had by mutual consent; but all trace of such a custom is lost. We know however (3 Salk. *Rep.* 138) that, until the 44 Eliz., a divorce à vinculo matrimonii might be had in the ecclesiastical courts for adultery; but in Foljambe's case, which occurred in that year in the Star Chamber, Archbishop Bancroft, upon the advice of divines, held that adultery was only a cause of divorce à mensâ et thoro.

The history of the law of divorce in England may perhaps be thus satisfactorily explained. Marriage, being a contract of a civil nature, might originally be dissolved by consent; and probably the ordinary courts of justice asserted their jurisdiction over this as well as every other description of contract. At length, the rite of marriage having been elevated to the dignity of a sacrament by Pope Innocent III., A.D. 1215, the ecclesiastical courts asserted the sole jurisdiction over it. In the course of time the power of these courts was again controlled, and the sole jurisdiction for granting divorces for matter arising subsequently to the marriage was vested in the superior court of the kingdom, the House of Lords, where it was less likely to be abused than by the ecclesiastical authorities, who used to grant these and other dispensations for money.

Marriage is now, by the law of England, indissoluble by the decree of any of the ordinary courts, on account of any cause that arises subsequently to the marriage; but divorce à vinculo matrimonii may still for adultery, &c. be obtained by act of parliament. For this purpose it is necessary that a civil action should have been brought by the husband in one of the courts of law against the adulterer [ADULTERY], and damages obtained therein, or some sufficient reason adduced why such action was not brought, or damages obtained, and that a definitive sentence of divorce à mensâ et thoro should have been pronounced between the parties in the ecclesiastical court. But this sentence cannot be obtained for the adultery of the wife, if she recriminates, and can

prove that the husband has been unfaithful to the marriage vow; and further, to prevent any collusion between the parties, both houses of parliament may, if necessary, and generally do, require satisfactory evidence that it is proper to allow the bill of divorce to pass.

The first proceeding of this nature was in the reign of Edward VI., and bills of divorce have since greatly increased. Where the injured husband can satisfy both houses of parliament, which are not bound in granting or withholding the indulgence by any of those fixed rules which control the proceedings of ordinary courts, a divorce is granted. The expenses of the proceeding are so considerable as to amount to an absolute denial of the relief to the mass of society; indeed from this circumstance divorce bills have not improperly been called the privilege of the rich. There is an order of the House of Lords that, in every divorce bill on account of adultery, a clause shall be inserted to prohibit the marriage of the offending parties with each other; but this clause is generally omitted; indeed it has been inserted only once, and that in a very flagrant case. But it is not unusual for parliament to provide that the wife shall not be left entirely destitute, by directing a payment of a sum of money, in the nature of alimony, by the husband, out of the fortune which he had with the wife. By the divorce à vinculo matrimonii the wife forfeits her dower. [DOWER.]

A Parliamentary return (354, Sess. 1844) gives the number of matrimonial suits instituted in each metropolitan and diocesan court in England, Wales, and Ireland, for the four years 1840-1-2-3; the number in the Court of Session, Scotland; the number of appeals before the Judicial Committee of Privy Council, or the House of Lords; and the number of divorce acts passed in the same four years. The following is an abstract of this return:—

	Suits.
England	160
Wales	2
Ireland	57
Scotland	169

	Appeals.
Judicial Committee	6
House of Lords	4
	Divorce Acts.
1840	8
1841	5
1842	9
1843	5

In the Court of Arches the average expense of 32 suits was 168*l.*; in the Consistorial and Episcopal Court of London the average expense of 87 suits was 120*l.* In appeals before the Judicial Committee the average expense of 6 suits was 586*l.*; in appeals before the Lords (4 cases, all from the Court of Session, Scotland) the expenses varied from 23*l.* to 53*l.* The average expense (fees, House of Lords), of each act (27 acts) was 87*l.* 16*s.* 10*d.*

The causes admitted by various codes of law as grounds for the suspension or dissolution of marriage are various, and indicative of the state of society.

According to the law of Moses (24 *Deut.* i.), "When a man hath taken a wife and married her, and it come to pass that she find no favour in his eyes, because he hath found some uncleanness in her, then let him write her a bill of divorcement and give it in her hand, and send her out of his house." After 90 days, the wife might marry again. But after she had contracted a second marriage, though she should be again divorced, her former husband might not take her to be his wife. About the time of our Saviour, there was a great dispute between the schools of the great doctors Hillel and Shammai as to the meaning of this law. The former contended that a husband might not divorce his wife except for some gross misconduct, or for some serious bodily defect which was not known to him before marriage; but the latter were of opinion that simple dislike, the smallest offence, or merely the husband's will, was a sufficient ground for divorce. This is the opinion which the Jews generally adopted, and particularly the Pharisees, which explains their conduct when they came to Jesus "tempting him, and saying unto him, Is it lawful for a man to put away his wife for every cause?" (*Matth.* xix.) The answer was, "Moses, because of the hardness of your hearts,

suffered you to put away your wives, but from the beginning it was not so." From this it is evident that Christ considered that the law of Moses allowed too great a latitude to the husband in his exercise of the power of divorce, and that this allowance arose from "the hardness of their hearts;" by which we may understand that they were so habituated to the practice, that any law which should have abolished such practices would have been ineffectual. All it could do was to introduce such modifications, with the view of diminishing the existing practice, as the people would tolerate. The form of a Jewish bill of divorcement is given by Selden, *Uxor Ebraica*, lib. iii., ch. 24; and see Levi's *Ceremonies of the Jews*, p. 146.

It is probable that the usages in the matter of divorce now existing among the Arabs, are the same, or nearly so, as they were when Mohammed began his legislation. An Arab may divorce his wife on the slightest occasion: he has only to say to her "Thou art divorced," and she becomes so. So easy and so common is that practice, that Burckhardt assures us that he has seen Arabs not more than 45 years of age who were known to have had 50 wives, yet the Arabs have rarely more than one wife at a time.

By the Mohammedan law a man may divorce his wife orally and without any ceremony; when this is done, he pays her a portion, generally one-third of her dowry. He may divorce her twice, and take her again without her consent; but if he divorce her a third time, or put her away by a triple divorce conveyed in the same sentence, he cannot receive her again until she has been married and divorced by another husband, who must have consummated his marriage with her.

By the Jewish law it appears that a wife could not divorce her husband; but under the Mohammedan code, for cruelty and some other causes, she may divorce him; and this is the only instance in which Mohammed appears to have been more considerate towards women than Moses.

(Sale's *Koran;* Lane's *Modern Egyptians;* Hamilton's *Hedaya*, and the *Mishcat ul-Masâbih;* Selden's *Uxor Ebraica;* and see the case of *Lindo* v. *Belisario*, 1 Hagg. 216, before Lord Stowell.)

Among the Hindoos, and also among the Chinese, a husband may divorce his wife upon the slightest grounds, or even without assigning any reason. Some of the rules mentioned by the Abbé Dubois, as laid down in the 'Padma Purana,' one of the books of highest authority among the Hindoos, show their manner of thinking concerning the conduct of their wives. "In every stage of her life, a woman is created to obey. At first she yields obedience to her father and mother; when married, she submits to her husband and her father and mother-in-law; in old age, she must be ruled by her children. During her life she can never be under her own control. If her husband laugh, she ought to laugh; if he weep, she will weep also; if he is disposed to speak, she will join in conversation. When in the presence of her husband, a woman must not look on one side and the other; she must keep her eyes on her master, to be ready to receive his commands. When he speaks, she must be quiet, and listen to nothing besides. When he calls her, she must leave every thing else, and attend upon him alone." And in the Hindoo code it is said, "The Creator formed woman for this purpose, viz., that children might be born from her." The reasons for which, according to the Brahmanic law, a man may divorce his wife, may be seen in Colebrooke's *Digest of Hindoo Law*, vol. ii. p. 414, &c., 8vo. edit.; and Kalthoff, *Jus Matrimonii veterum Indorum* (Bonn, 1829, 8) p. 76, &c.

The laws in the several Grecian states regarding divorce were different, and in some of them men were allowed to put away their wives on slight occasions. The Cretans permitted it to any man who was afraid of having too great a number of children. Among the Athenians either husband or wife might take the first step towards dissolving the marriage. The wife might leave the husband, or the husband might dismiss his wife. Adultery on the part of the wife was apparently in itself a divorce; but the adultery, we may pre-

sume, must have been legally proved first. The Spartans seldom divorced their wives; indeed the ephori fined Lysander for repudiating his wife. Ariston (Herod. vi. 63) put away his second wife, but it seems to have been done rather to have a son, for his wife was barren, than according to the custom of the country. Anaxandrides (Herod. v. 39) was strongly urged by the ephori to divorce his barren wife, and on his not consenting, the matter was compounded by his taking another wife: thus he had two at once, which Herodotus observes was contrary to Spartan usage.

The common Roman term for Divorce is Divortium. It is said that the word Repudium, corresponding to which we have the word "repudiate," applied only to the dissolution of a contract of marriage (sponsalia), and not to an actual marriage (*Dig.* 50, tit. 16, s. 101): but Divortium and Repudium are sometimes used indifferently. Plutarch states (*Romulus*, c. 22) that originally the husband alone had the power of effecting a divorce, which may be true, but it was not so in the late period of the Republic and under the Empire. When the wife was *in manu viri*, a technical term that implied she was in the relation of a daughter to her husband, it is not easy to conceive how the wife could effect a divorce. In other cases, it is easily conceivable. The essence of the nature of a Roman marriage was abiding consent, and if either party expressed a dissent to the union, it followed that it was at an end. The first instance of a divorce at Rome, according to Gellius (iv. 3), was the case of Sp. Cervilius Ruga, who put away his wife because she was barren. As to this story, see Savigny, *Zeitschrift der Geschichthe Rechtswissenschaft*, v. 269. Divorces were common at Rome in the time of Cicero, as we may collect from his writings; and Cicero himself divorced his aged wife Terentia and took a young wife in her place. The portion (dos) which the wife brought with her to support part of the matrimonial expenses, was as a general rule returned to the wife when she was divorced by the husband, or when they separated by consent: this condition tended somewhat to check a husband from divorcing his wife on light grounds.

As the children of a Roman marriage were in the power of the father, and belonged to him alone, there was no difficulty in divorce as to this point. Whether the marriage continued to subsist or not, the children were alone at the disposal of the father. But a constitution of Diocletian and Maximian empowered a competent judge to declare whether the children should stay with the father or with the mother (*Cod.* v. tit. 24). In some cases, where the wife was to blame, as for instance if she had committed adultery, a sixth part of the dos might be retained by the husband.

As to the form of divorce, it was necessary that there should be some distinct declaration of the intention of the husband or wife, or of both, to separate. In some cases, a written notice was delivered. The Lex Julia de Adulteriis required seven witnesses to the divorce, and a freedman of the person who made the divorce. One object of the Lex Papia et Poppæa, which, as well as the Lex Julia de Adulteriis, was passed in the time of Augustus, was to impose some restraint on divorces. The practice of divorce continued under the Christian Emperors, but subject to the observance of certain forms, and certain penalties.

Among the antient Britons, it may be collected from the laws of Howel the Good that the husband and wife might agree to dissolve the marriage at any time; in which case, if the separation took place during the first seven years of the marriage, a certain specified distribution of the property was made, but after that period the division was equal. No limit was set to the husband's discretion in divorcing his wife, but the wife could only divorce her husband in case he should be leprous, have bad breath, or be impotent, in which cases she might leave him and obtain all her property. The parties were at liberty to contract a fresh marriage; but if a man repented of having divorced his wife, although she had married another man, yet if he could overtake her before the consummation of the marriage, or, as the law expresses it, "with one foot in the bed of

her second husband, and the other outside," he might have his wife again.

The law of Scotland relating to divorce differs widely from that in England: there, a divorce *à vinculo matrimonii* is a civil remedy, and may be obtained for adultery, or for wilful desertion by either party, persisted in for four years, though to this a good ground of separation is a defence. But recrimination is no bar to a divorce, as it is in England.

In the Dutch law there are only two causes of divorce *à vinculo matrimonii*, adultery and desertion.

In Spain the same causes affect the validity of a marriage as in England, and the contract is indissoluble by the civil courts, matrimonial causes being exclusively of ecclesiastical cognizance. (*Instit. Laws of Spain.*)

The law of France, before the Revolution, following the judgment of the Catholic Church, held marriage to be indissoluble; but the legislators of the early Revolutionary period permitted divorce at the pleasure of the parties, where incompatibility of temper was alleged. In the first three months of the year 1793, the number of divorces in the city of Paris alone amounted to 562, and the marriages to 1785, a proportion not much less than one to three; while the divorces in England for the previous century did not amount to much more than one-fifth of the number. (Burke's *Letters on a Regicide Peace.*) Burke further states that he followed up the inquiry through several subsequent months till he was tired, and found the results still the same. It must be remembered however that Burke wrote in the spirit of an advocate; that the period he chose was that immediately following the promulgation of the law, when all couples previously discontented with each other obtained divorces; and that if his calculations had fully borne out his statement, he would have given them in his pamphlet, which was written for a political purpose, and he would not have rested satisfied with indefinite allegations. It was generally admitted however that the licence was too great. The Code Napoleon accordingly restricted the liberty, but still allowed either party to demand a divorce on the ground of adultery committed by the other; for outrageous conduct, or ill-usage; on account of condemnation to an infamous punishment; or to effect it by mutual consent, expressed under certain conditions. By the same code a woman could not contract a new marriage until the expiration of ten months from the dissolution of the preceding.

On the restoration of the Bourbons a law was promulgated (8th May, 1816), declaring divorce to be abolished; that all suits then pending for divorce, for definite cause, should be for separation only, and that all steps then taken for divorce by mutual consent should be void; and such is now the law of France.

In the United States, marriage, though it may be celebrated before clergymen as well as civil magistrates, is considered as a civil contract. The causes of divorce, and the facility or difficulty of obtaining it, are by no means the same in the several States. The more general causes of a divorce *à vinculo matrimonii* are, former marriage, physical incapacity, or consanguinity; by the Connecticut law, fraudulent contract; and by the New York code, idiotcy and insanity, and either party being under the age of consent. Adultery is also a cause of divorce *à vinculo matrimonii;* and the laws of some of the States prohibit the guilty party from marrying again. If the husband or wife is absent seven years, or by the laws of some States, three years, and not heard from, the other is at liberty to marry again; and in some States, if the husband desert the wife, and make no provision for her support during three years, being able to make such provision, the wife can obtain a divorce. Extreme cruelty in either party is also generally a cause of divorce *à vinculo matrimonii.* In many of the States applications to the legislature for divorce, in cases not provided for by the statutes, are very frequent. In New York and New Jersey divorce is a subject of Chancery jurisdiction, from which, as in other cases, questions of law may be referred to a jury for trial. In New Hampshire, joining the religious society of Shakers, who hold cohabitation unlawful, and continuing in that society for three years, is sufficient ground for a

divorce. But in most of the States the courts of law have cognizance of divorce. The laws prescribe the provision to be made for the wife in case of divorce, confiding to the courts however some degree of discretion in fixing the amount of alimony.

It is very questionable, says Chancellor Kent, whether the facility with which divorces can be procured in some of the States be not productive of more evil than good: and he states that he has had reason to believe, in the exercise of a judicial cognizance over numerous cases of divorce, that adultery was sometimes committed on the part of the husband for the very purpose of the divorce.

(Kent's *Commentaries; Ency. Americ.* Upon the general advantages of indissolubility, as opposed to unlimited divorce, see Hume's *Essay on Polygamy and Divorce;* Paley's *Moral Philosophy;* and the judgment of Lord Stowell in Evans *v.* Evans, 1 Hagg. *Repts.*, 48; Milton, in his famous treatise, advocates the increased facility of obtaining a divorce; and see also Gibbon, *Decline and Fall*, c. 44.)

DÎWÂN is a Persian word familiar to readers of works relating to the East, in the sense of—1st, a senate, or council of state; and, 2nd, a collection of poems by one and the same author. The earliest acceptation, however, in which we find it employed is that of a muster-roll, or military pay-book.—The Arabic historian, Fakhreddin Râzi, informs us that when, in the caliphat of Omar, the second successor of Mohammed, the conquests of the Mussulmans assumed an extensive character, the equal distribution of the booty became a matter of great difficulty, A Persian marzbân, or satrap, who happened to be at the head-quarters of the caliph at Medinah, suggested the adoption of the system followed in his own country, of an account-book, in which all receipts and disbursements were regularly entered, along with a list, duly arranged, of the names of those persons who were entitled to a share in the booty. With the register itself its Persian appellation (dîwân) was adopted by the Arabs. (Freytag, *Locmani Fabulæ et plura loca ex codd. historicis selecta*, &c., pp. 32, 33; Henzi, *Fragmenta Arabica*, St. Petersburg, 1820, p. 36, et seq.) Whether a council of state was subsequently called dîwân, as having originally been a financial board appointed to regulate the list (dîwân) of stipendiaries and pensioners, or whether it was so called as being summoned according to a list (dîwân) containing the names of all its members, we are unable to determine. The opinion that a body of councillors should have received this appellation, as has been asserted by some, in consequence of the expression of an ancient king of Persia, *inân dîwân end*, "these (men) are (clever like) devils," will scarcely be seriously entertained by any one. The word 'dîwân' is also used to express the saloon or hall where a council is held, and has been applied to denote generally a state chamber, or room where company is received. Hence probably it has arisen that the word 'divan,' in several European languages, signifies a sofa. Collections of poems in Persian, Arabic, Turkish, Hindustani, &c., seem to have received the appellation 'dîwân' from their methodical arrangement, inasmuch as the poems succeed one another according to the alphabetic order of the concluding letters of the rhyming syllables, which are the same in all the distichs throughout each poem.

DOCKET. [BANKRUPT.]

DOCTOR, one that has taken the highest degree in the faculties of Divinity, Law, Physic, or Music. In its original import it means a person so skilled in his particular art or science as to be qualified to teach it.

There is much difference of opinion as to the time when the title of Doctor was first created. It seems to have been established for the professors of the Roman law in the University of Bologna, about the middle of the twelfth century. Antony à Wood says, that the title of Doctor in Divinity was used at Paris, after Peter Lombard had compiled his Sentences, about the year 1151. (*Hist. and Antiq. Univ. of Oxford*, 4to. Oxf. 1792, vol. i. p. 62.) Previously those who had proceeded in the faculties had been termed Masters only. The title of Doctor was not adopted in the English Uni-

versities earlier than the time of John or Henry the Third. Wood cites several instances of the expense and magnificence which attended the early granting of the higher degrees in England in the reigns of Henry III. and Edward I. (Wood, ut supr. pp. 65, 66.)

In Oxford the time requisite for the Doctor of Divinity's degree, subsequent to that of M.A., is eleven years: for a Doctor's of Civil Law, five years from the time at which the Bachelor of Laws' degree was conferred. Those who take this degree professionally, in order to practise in Doctors' Commons, are indulged with a shorter period, and permitted to obtain it at four instead of five years, upon making oath in convocation of their intentions so to practise. For the degree of M.D., three years must intervene from the time of the candidate's having taken his Bachelor of Medicine's degree. For a Doctor's degree in Divinity or Law three distinct lectures are to be read in the schools, upon three different days: but by a dispensation, first obtained in convocation or congregation, all three are permitted to be read upon the same day; so that by dispensation a single day is sufficient in point of time for these exercises. For a Doctor's degree in Medicine, a dissertation upon some subject, to be approved by the Professor of Medicine, must be publicly recited in the schools, and a copy of it afterwards delivered to the Professor.

In Cambridge a Doctor of Divinity must be a Bachelor of Divinity of five, or an M.A. of twelve years' standing. The requisite exercises are one act, two opponencies, a Latin sermon, and an English sermon. A Doctor of Laws must be a Bachelor of Laws of five years' standing. His exercises are one act and one opponency. Doctors of Physic proceed in the same manner as Doctor of Laws. For a Doctor's degree in music, in both Universities, the exercise required is the composition and performance of a solemn piece of music, to be approved by the Professor of the Faculty. (*Oxf. and Camb. Calendars.*)

Coloured engravings of the dresses worn by the doctors of the several faculties of Oxford and Cambridge will be found in Ackermann's *History of the Univ. of Oxford*, 4to., 1814, vol. ii. p. 259, *et seq.*; and in his *History of the Univ. of Cambridge*, 4to., 1815, vol. ii. p. 312, *et seq.*

DOCTORS' COMMONS, the College of Civilians in London, near St. Paul's Churchyard, founded by Dr. Harvey, Dean of the Arches, for the professors of the civil law. The official residences of the judges of the Arches' Court of Canterbury, of the judge of the Admiralty, and the judge of the Prerogative Court of Canterbury, are situated there. It is also the residence of the doctors of the civil law practising in London, who live there (for diet and lodging) in a collegiate manner, and common together, and hence the place is known by the name of Doctors' Commons. It was burnt down in the fire of London, and rebuilt at the charge of the profession. (*Chamberlayne Mag. Brit. Notitia.*) To the college belong a certain number of advocates and proctors. [BARRISTER, p. 317; PROCTOR.]

In the Common Hall are held all the principal spiritual courts, and the High Court of Admiralty.

DOMESDAY BOOK, the register of the lands of England, framed by order of King William the Conqueror. It was sometimes termed *Rotulus Wintoniæ*, and was the book from which judgment was to be given upon the value, tenures, and services of the lands therein described. The original is comprised in two volumes, one a large folio, the other a quarto. The first begins with Kent, and ends with Lincolnshire; is written on three hundred and eighty-two double pages of vellum, in one and the same hand, in a small but plain character, each page having a double column; it contains thirty-one counties. After Lincolnshire (fol. 373), the claims arising in the three ridings in Yorkshire are taken notice of, and settled; then follow the claims in Lincolnshire, and the determination of the jury upon them (fol. 375): lastly, from fol. 379 to the end there is a recapitulation of every wapentake or hundred in the three ridings of Yorkshire: of the towns in each hundred, what number of carucates and ox-gangs are in every town, and the names of the owners placed in very small

character above them. The second volume, in quarto, is written upon four hundred and fifty double pages of vellum, but in a single column, and in a large fair character, and contains the counties of Essex, Norfolk, and Suffolk. In these counties the "liberi homines" are ranked separate: and there is also a title of "Invasiones super Regem."

These two volumes are preserved, among other records of the Exchequer, in the Chapter House at Westminster: and at the end of the second is the following memorial, in capital letters, of the time of its completion: "Anno Millesimo Octogesimo Sexto ab Incarnatione Domini, vigesimo vero regni Willielmi, facta est ista Descriptio, non solum per hos tres Comitatus, sed etiam per alios." From internal evidence there can be no doubt but that the same year, 1086, is assignable as the date of the first volume.

In 1767, in consequence of an address of the House of Lords, George III. gave directions for the publication of this Survey. It was not, however, till after 1770 that the work was actually commenced. Its publication was intrusted to Mr. Abraham Farley, a gentleman of learning as well as of great experience in records, who had almost daily recourse to the book for more than forty years. It was completed early in 1783, having been ten years in passing through the press, and thus became generally accessible to the antiquary and topographer. It was printed in fac-simile, as far as regular types, assisted by the representation of particular contractions, could imitate the original.

In 1816 the commissioners upon the Public Records published two volumes supplementary to Domesday, which now form one set with the volumes of the Record: one of these contains a general introduction, accompanied with two different indexes of the names of places, an alphabetical index of the tenants in capite, and an "Index Rerum." The other contains four records; three of them, namely, the Exon Domesday, the Inquisitio Eliensis, and the Liber Winton., contemporary with the Survey; the other record, called 'Boldon Book,' is the Survey of Durham, made in 1183, by Bishop Hugh Pudsey. These supplementary volumes were published under the superintendence of Sir Henry Ellis.

Northumberland, Cumberland, Westmorland, and Durham were not included in the counties described in the Great Domesday; nor does Lancashire appear under its proper name; but Furness, and the northern part of that county, as well as the south of Westmorland and part of Cumberland, are included within the West Riding of Yorkshire: that part of Lancashire which lies between the rivers Ribble and Mersey, and which at the time of the Survey comprehended six hundreds and a hundred and eighty-eight manors, is subjoined to Cheshire. Part of Rutlandshire is described in the counties of Northampton and Lincoln; and the two ancient hundreds of Atiscross and Existan, deemed a part of Cheshire in the Survey, have been since transferred to the counties of Flint and Denbigh. In the account of Gloucestershire we find a considerable portion of Monmouthshire included, seemingly all between the rivers Wye and Usk. Kelham thinks it probable that the king's commissioners might find it impossible to take any exact survey of the three counties northernmost of all, as they had suffered so much from the Conqueror's vengeance. As to Durham, he adds, all the country between the Tees and Tyne had been conferred by Alfred on the bishop of this see, and at the coming in of the Conqueror he was reputed a count-palatine.

The order generally observed in writing the Survey was to set down in the first place at the head of every county (except Chester and Rutland) the king's name, *Rex Willielmus*, and then a list of the bishops, religious houses, churches, any great men, according to their rank, who held of the king in capite in that county, likewise of his thains, ministers, and servants; with a numerical figure in red ink before them, for the better finding them in the book. In some counties the cities and capital boroughs are taken notice of before the list of the great tenants is entered, with the particular laws or customs which prevailed in each of them; and in others they are inserted promiscuously. After the list of the

tenants, the manors and possessions themselves which belong to the king, and also to each owner throughout the whole county, whether they lie in the same or different hundreds, are collected together and minutely noted, with their under tenants. The king's demesnes, under the title of *Terra Regis*, always stand first.

For the adjustment of this Survey certain commissioners, called the king's justiciaries, were appointed. In folios 164 and 181 of the first volume we find them designated as "Legati Regis." Those for the midland counties at least, if not for all the districts, were Remigius, bishop of Lincoln, Walter Giffard, Earl of Buckingham, Henry de Ferrers, and Adam, the brother of Eudo Dapifer, who probably associated with them some principal person in each shire. These inquisitors, upon the oaths of the sheriffs, the lords of each manor, the presbyters of every church, the reves of every hundred, the bailiffs and six villains of every village, were to inquire into the name of the place, who held it in the time of King Edward, who was the present possessor, how many hides in the manor, how many carucates in demesne, how many homagers, how many villains, how many cotarii, how many servi, what free-men, how many tenants in socage, what quantity of wood, how much meadow and pasture, what mills and fish-ponds, how much added or taken away, what the gross value in King Edward's time, what the present value, and how much each free-man or soc-man had or has. All this was to be triply estimated: first, as the estate was held in the time of the Confessor; then as it was bestowed by King William; and thirdly, as its value stood at the formation of the Survey. The jurors were, moreover, to state whether any advance could be made in the value. Such are the exact terms of one of the inquisitions for the formation of this Survey, still preserved in a register of the monastery of Ely.

The writer of that part of the Saxon Chronicle which relates to the Conqueror's time, informs us, with some degree of asperity, that not a hide or yardland, not an ox, cow, or hog was omitted in the census. It should seem, however, that the jurors, in numerous instances, framed returns of a more extensive nature than were absolutely required by the king's precept, and it is perhaps on this account that we have different kinds of descriptions in different counties.

From the space to which we are necessarily limited, it is impossible to go more minutely into the contents of this extraordinary record, to enlarge upon the classes of tenantry enumerated in it, the descriptions of land and other property therewith connected, the computations of money, the territorial jurisdictions and franchises, the tenures and services, the criminal and civil jurisdictions, the ecclesiastical matters, the historical and other particular events alluded to, or the illustrations of ancient manners, with information relating to all of which it abounds, exclusive of its particular and more immediate interest in the localities of the country for the county historian.

As an abstract of population it fails. The tenants in capite, including ecclesiastical corporations, amounted scarcely to 1400; the under-tenants to somewhat less than 8000. The total population, as far as it is given in the record itself, amounts to no more than 282,242 persons. In Middlesex, pannage (payment for feeding) is returned for 16,535, in Hertfordshire for 30,705, and in Essex for 92,991 hogs; yet not a single swineherd (a character so well known in the Saxon times) is entered in these counties. In the Norman period, as can be proved from records, the whole of Essex was, in a manner, one continued forest; yet once only in that county is a forester mentioned, in the entry concerning Writtle. Salt-works, works for the production of lead and iron, mills, vineyards, fisheries, trade, and the manual arts, must have given occupation to thousands who are unrecorded in the survey; to say nothing of those who tended the flocks and herds, the returns of which so greatly enlarge the pages of the second volume. In some counties we have no mention of a single priest, even where churches are found; and scarcely any inmate of a monastery is recorded beyond the abbot or abbess, who stands as a tenant in capite. These remarks might

be extended, but they are sufficient for their purpose. They show that, in this point of view, the Domesday Survey is but a partial register. It was not intended to be a record of population further than was required for ascertaining the geld.

There is one important fact, however, to be gathered from its entries. It shows in detail how long a time elapsed before England recovered from the violence attendant on the Norman Conquest. The annual value of property, it will be found, was much lessened as compared with the produce of estates in the time of Edward the Confessor. In general, at the survey, the king's lands were more highly rated than before the Conquest; and his rent from the burghs was greatly increased: a few also of the larger tenants in capite had improved their estates; but, on the whole, the rental of the kingdom was reduced, and twenty years after the Conquest the estates were, on an average, valued at little more than three-fourths of the former estimate. An instance appears in the county of Middlesex, where no Terra Regis, however, occurs. The first column, headed T. R. E., shows the value of the estates in the time of King Edward the Confessor; the second, the sums at which they were rated at the time of the survey, *tempore Regis Willielmi*:—

	T.R.E.			T.R.W.		
	£	s.	d.	£	s.	d.
Terra Archiep. Cant.	100	14	0	86	12	0
Terra Episc. Lond.	190	11	10	157	19	6
Eccl. S. Pet. West.	114	0	0	86	16	6
Eccl. Trin. Rouen	25	10	0	20	10	0
Geoff. de Mandeville	121	13	0	112	5	0
Ernald de Hesding	56	0	0	24	0	0
Walter de St. Waleri	120	0	0	111	0	0
Terr. alior. Tenent	204	0	0	147	8	0
	932	8	10	746	11	0

We shall now say a few words on the uses and consequences of the Survey. By its completion the king acquired an exact knowledge of the possessions of the crown. It afforded him the names of the landholders. It furnished him with the means of ascertaining the military strength of the country; and it pointed out the possibility of increasing the revenue in some cases, and of lessening the demands of the tax-collectors in others. It was moreover a register of appeal for those whose titles to their property might be disputed.

Appeals to the decision of this Survey occur at a very early period. Peter of Blois notices an appeal of the monks of Croyland to it in the reign of Henry I. Others occur in the Abbreviatio Placitorum from the time of John downward. In later reigns the pleadings upon ancient demesne are extremely numerous; and the proof of ancient demesne still rests with the Domesday Survey. Other cases in which its evidence is yet appealed to in our courts of law, are in proving the antiquity of mills, and in setting up prescriptions *in non decimando*. By stat. 9 Edw. II., called Articuli Cleri, it was determined that prohibition should not lie upon demand of tithe for a *new* mill. The mill, therefore, which is found in Domesday must be presumed older than the 9th Edw. II., and is of course discharged, by its evidence, from tithe.

On the discharge of abbey-lands from tithes, as proved by Domesday, it may be proper to state that Pope Paschal II., at an early period, exempted generally all the religious from paying tithes of lands in their own hands. This privilege was afterwards restrained to the four favoured orders, the Cistercians, the Templars, the Hospitallers, and the Premonstratensians. So it continued till the fourth Council of Lateran, in 1215, when the privilege was again restrained to such lands as the abbeys had at that time, and was declared not to extend to any after-purchased lands. And it extends only to lands *dum propriis manibus coluntur*. From the paucity of dates in early documents, the Domesday Survey is very frequently the only evidence which can be adduced that the lands claiming a discharge were vested in the monastery previous to the year expressed in the Lateran Council.

Although in early times, Domesday, precious as it was always deemed, occasionally travelled, like other records, to distant parts, till 1696 it was usually kept with the king's seal, at Westminster, by the side of the Tally Court in the exchequer, under three locks and keys, in the charge of the auditor, the chamberlains, and deputy chamberlains of the exchequer. In the last-mentioned year it was deposited among other valuable records in the Chapter House, where it still remains.

The two most important works for the student of the Domesday Survey are Kelham's *Domesday Book illustrated*, 8vo., London, 1788, and the *General Introduction* to the Survey, reprinted by command of his Majesty under the direction of the Commissioners on the Public Records, 2 vols. 8vo., 1833, accompanied by fresh indices. A translation of the whole, under the title of 'Dom-Boc,' was undertaken early in the present century by the Rev. William Bawdwen, Vicar of Hooton Pagnell, in Yorkshire, who published Yorkshire, with the counties of Derby, Nottingham, Rutland, and Lincoln, in 4to., Doncaster, 1809, followed by the counties of Middlesex, Hertford, Buckingham, Oxford, and Gloucester, 4to., Doncaster, 1812; but the work went no further. County portions of this record will be found translated in most of our provincial histories; the best are undoubtedly those in Dugdale's Warwickshire, Nichols's Leicestershire, Hutchins's Dorsetshire, Nash's Worcestershire, Bray and Manning's Surrey, and Clutterbuck's Hertfordshire. Mr. Henry Penruddocke Wyndham published Wiltshire, extracted from Domesday Book, 8vo., Salisb., 1788, and the Rev. Richard Warner, Hampshire, 4to., Lond., 1789. Warwickshire has been published recently by Mr. Reader. There are numerous other publications incidentally illustrative of Domesday topography, which the reader must seek for according to the county as to which he may desire information.

DOMICILE. In the Roman law Domicile (*Domicilium*) was defined to be that place which a person "makes his family residence, and principal place of business; from which he does not depart unless some business requires: when he leaves it he considers himself a wanderer, and when he returns to it he deems himself no longer abroad." (Cod. lib. 10, tit. 39, 1, 7.) Similar definitions of the term are given by modern jurists.

The constitution of domicile depends on the concurrence of two elements—1st, residence in a place; and, 2nd, the intention of the party to make that place his home. Domicile cannot be established except it be *animo et facto*, that is, actually and in intention also. It is sometimes not very easy to determine in what place a person actually has his domicile. It is obviously a question depending upon the evidence in each particular case, which is of course capable of every variety both in nature and degree. The evidence as to the place of residence is frequently far from clear; while the intention of the party has to be gathered from circumstances yet more difficult to come to a conclusion upon.

The following rules appear to comprise the generally adopted principles on the subject:—

1. The domicile of the parents is the domicile of the child. "*Patris originem unusquisque sequitur.*" (Cod. lib. 10, tit. 31, 1, 36.) This is usually called the domicile of origin or nativity, and is in most cases the same with the place of birth. But the mere accident of birth in a place where the parents may happen to be *in itinere*, or on a visit, will have no effect in determining the domicile of origin. An illegitimate child, having no father in contemplation of law, follows the domicile of his mother.

2. Minors are generally considered incapable of changing, by their own act, the domicile of origin during their minority. If the father change his domicile, that of the children follows it; and if he dies, his last domicile will be that of his infant children. It has been much questioned whether the guardians of minors, idiots, or lunatics can change their domicile. It has been held in England that a mother, being guardian, might change the domicile of her children, provided it was not done for a fraudulent purpose, which would be presumed in the absence of any reasonable motive. In Scotland a minor, after the age of puberty, is not personally under the control of his guardian, and may change his domicile by his own act.

3. A married woman follows the domicile of her husband.

4. A widow retains the domicile of her late husband till she acquires another.

5. The place where a man resides is, for a great many purposes, to be considered his domicile, and, *primâ facie*, is to be taken to be so till other facts establish the contrary.

6. Every person of full age, who removes from one place to another, with the intention of making the latter his place of residence, immediately constitutes it his domicile.

7. The domicile of origin must be considered to prevail till the party has not only acquired another, but manifested and carried into effect an intention of abandoning his former domicile, and abiding by another as his sole domicile. But the domicile of origin cannot be preserved by a mere floating intention of returning to it at some future period, or revived by a mere abandonment of the acquired domicile, unless perhaps where the party dies *in itinere* towards the intended domicile. "It is to be remembered," says Sir Wm. Scott (Lord Stowell), "that the native character easily reverts, and that it requires fewer circumstances to constitute domicile in the case of a native subject than to impress the national character on one who is originally of another country."

8. An acquired domicile is not lost by mere abandonment, but continues until a subsequent domicile is acquired, which can be done only *animo et facto.*

9. A married man's domicile is generally to be taken to be where the residence of his family is; unless this conclusion is controlled by circumstances, such as proof that he has altogether abandoned his family, or that their place of residence is temporary: but

10. If a man, whether married or not, has two places of residence at different times of the year, that will be esteemed his domicile which he himself selects, describes, or deems to be his home, or which appears to be the centre of his affairs; *e. g.* that of a nobleman or country gentleman, his residence in the country—that of a merchant, his residence in town.

11. Residence in a place, to produce a change of domicile, must be voluntary. Thus, if it be produced by constraint, as by banishment, arrest, or imprisonment, it cannot affect the domicile. For the same reason a person abroad in the service of the state does not change his domicile. But it has been held that a Scotchman entering the service of the East India Company acquires a domicile in India, which (like a domicile acquired in any of the colonies) is in legal effect the same as a domicile in England.

12. It was held in the Roman law that a man might, under certain circumstances, be said to have no domicile, as when he quits one place of residence with the intention of fixing himself in another. But this is not admitted in our law, in which, as before stated, it is held that the former domicile is not lost till the new one is acquired *animo et facto.* And in the possible case of a man of unknown origin acquiring two contemporaneous domiciles under the same circumstances, the *lex loci rei sitæ* would probably prevail *ex necessitate* in questions as to his personal property.

Thus it appears that domicile, considered in relation to the civil status of the person, is of three kinds—1st, domicile of origin, depending on that of the parents at the time of birth; 2nd, domicile of choice, which is voluntarily acquired by the party; and, 3rd, domicile by operation of law, as that of a wife, arising from marriage.

The word domicile is sometimes used in another sense, as signifying the length of residence required by the law of some countries for the purpose of founding jurisdiction in civil actions. In England every person, whether native or foreigner, who is for the time being within England, is amenable to the jurisdiction of its courts, and may sue or be sued in them; but in Scotland a residence of at least forty days within the country is necessary to establish jurisdiction *ratione domicilii.*

(On the subject of Domicile, see Story's *Commentaries on the Conflict of Laws,* c. iii.)

DONA'TIO MORTIS CAUSA, a gift made in prospect of death. The doctrine is derived from the Roman law, and a donation of this kind is defined in the Institutes (ii., tit. 7) as "a gift which is made under an apprehension of death, as when a thing is given upon condition that, if the donor die, the donee shall have it, but that the thing given shall be returned if the donor shall survive the danger which he apprehends, or shall repent that he has made the gift; or if the donee shall die before the donor." The definition of a "donatio mortis causa" in Fleta

(ii. 57, *De Testamentis*) agrees almost word for word with that of Ulpian (*Dig.* 39, tit. 6, s. 2). Fleta's definition is, perhaps, taken from Bracton (ii. 26), who has adopted the words of Ulpian. In the English law it is necessary to the validity of this gift that it be made by the donor with relation to his dying by the illness which affects him at the time of the gift, but it takes effect only in case he die of that illness. There must be a delivery of the thing itself to the donee; but in cases where actual transfer is impossible, as, for instance, goods of bulk deposited in a warehouse, the delivery of the key of the warehouse is effectual. This principle is expounded by Lord Hardwicke, in the case of Ward *v.* Turner (2 Vez. 431). A donatio mortis causâ partakes of the nature of a legacy so far as to be liable to the debts of the donor, and, by 36 Geo. III. c. 53, §. 7, to the legacy duty; but as it takes effect from the delivery, and not by a testamentary act, it is not within the jurisdiction of the ecclesiastical courts, and neither probate or administration is necessary, nor the assent of the executors, as in the case of a legacy.

The English law of Donations, "mortis causa," is explained in Roper *On Legacies*, vol. i.; and in the judgment of Lord Hardwicke already referred to. See also Edwards *v.* Jones, 1 M. & C. 226; Duffield *v.* Elwes, 1 S. & S. 239.

Ulpian (*Dig.* 39, tit. 6, s. 2) quotes Julian as laying down three forms of "donatio mortis causa:" first, when a man under no present danger of death, but solely influenced by a consideration of his mortality, makes a gift; second, when a man, moved by imminent danger of death, makes a gift, so that the thing becomes forthwith the property of the receiver; third, when a man, moved by danger, gives not so that the thing shall forthwith become the property of the receiver, but only in case of the death of the giver. But the third was the only proper kind of "donatio mortis causa." Any thing might be the subject of a "donatio mortis causa," as a piece of land, an agreement that a sum of money should be paid to the donee after the death of the giver, or a slave. It follows from the nature of the things that might be the subjects of a "donatio mortis causa," that the Roman law did not require delivery, as the English law does, a circumstance which restrains the power of making a "donatio mortis causa" by the English law. It was long disputed whether "donationes mortis causa" should be considered as legacies, or as other gifts; but a constitution of Justinian (*Cod.* viii. tit. 57, s. 4) assimilated them in all respects to legacies, and declared that they might be either made orally or in writing, but it required four witnesses.

DONATIVE. [BENEFICE, p. 344]

DOWAGER is a widow who is endowed [DOWER]; but the term is often applied to ladies of rank, whether they may be endowed or not.

The Queen Dowager is the widow of a king, and she has many of the privileges of a queen-consort. But it is not high treason to conspire to kill her; nor is it high treason to have sexual intercourse with her, as in the case of a queen-consort. The reason of the distinction in this second case is, that the succession to the crown is not endangered by sexual connection with her. It is said that a man cannot marry a queen-dowager without a licence from the king, under pain of forfeiting his lands and goods; but this may not be so now.

By the Regency Bill of 1830 (1 Wm. IV. c. 2), the queen of William IV. would, if she had survived him, have been Regent of the United Kingdom, in case of his Majesty's demise and his leaving issue by the queen.

The queen-dowager has now, by act of parliament (1 & 2 Wm. IV. c. 11), a pension of 100,000*l.*, and also Marlborough House and the rangership of Bushy Park for life.

DOWER is that part of the husband's lands, tenements, or hereditaments to which the wife is entitled for her life upon the husband's death.

Prior to the reign of Charles II. five, and, until the passing of the act 3 & 4 Wm. IV. c. 105, there were four kinds of dower known to the English law.

1. Dower at the common law.
2. Dower by custom.
3. Dower ad ostium ecclesiæ.
4. Dower ex assensu patris.
5. Dower de la plus beale.

This last was merely a consequence of tenure by knight's service, and was abolished by stat. 12 Charles II. c. 24; and the 3rd and 4th having long become obsolete, were finally abolished by the abovementioned statute of Wm. IV.

By the old law, the right called dower extended to all the lands of which the husband was seised at any time during the marriage, and which a child of the husband and wife might by possibility inherit; and they remained liable to dower in the hands of a purchaser, though various ingenious modes of conveyance were contrived, which in some cases prevented the attaching of dower; but this liability was productive of great inconvenience, and frequently of injustice. The law, too, was inconsistent, for the wife was not dowable out of her husband's equitable estates, although the husband had his courtesy in those to which the wife was equitably entitled. To remedy these inconveniences the statute above mentioned was passed, and its objects may be stated to be—1, to make equitable estates in possession liable to dower; 2, to take away the right to dower out of lands disposed of by the husband absolutely in his life or by will; 3, to enable the husband, by a simple declaration in a deed or will, to bar the right to dower.

"The law of dower," say the Real Property Commissioners, in their Second Report, upon which this statute was founded, "though well adapted to the state of freehold property which existed at the time when it was established, and during a long time afterwards, had, in consequence of the frequent alienation of property which takes place in modern times, become exceedingly inconvenient." In short, dower was considered and treated as an incumbrance, and was never, except in cases of inadvertency, suffered to arise. The increase of personal property, and the almost universal custom of securing a provision by settlement, afforded more effectual and convenient means of providing for the wife. Dower at the common law is the only species of dower which affects lands in England generally; dower by custom is only of local application, as dower by the custom of gavelkind and Borough Enlish; and freebench applies exclusively to copyhold lands. The former is treated of in Robinson's 'History of Gavelkind,' the latter in Watkins on 'Copyholds.'

As to dower at common law, every married woman who has attained the age of nine years is entitled to dower by common law, except aliens, and Jewesses, so long as they continue in their religion. From the disability arising from alienage, a queen, and also an alien licensed by the king, are exempt.

The wife is entitled to be endowed, that is, to have an estate for life in the third part of the lands and tenements of which the husband was solely seised either in deed or in law, or in which he had a right of entry, at any time during the marriage, of a legal or equitable estate of inheritance in possession, to which the issue of the husband and wife (if any) might by possibility inherit.

By Magna Charta it is provided, that the widow shall not pay a fine to the lord for her dower, and that she shall remain in the chief house of her husband for forty days after his death, during which time her dower shall be assigned. The particular lands and hereditaments to be held in dower must be assigned by the heir of the husband, or his guardian, by metes and bounds if divisible, otherwise specially, as of the third presentation to a benefice, &c. If the heir or his guardian do not assign, or assign unfairly, the widow has her remedy at law, and the sheriff is appointed to assign her dower; or the widow may enforce her rights by bill in equity, which is now the usual remedy.

A woman is barred of her dower by the attainder of her husband for treason, by her own attainder for treason, or felony, by divorce *à vinculo matrimonii*, by elopement from her husband and living with her adulterer, by detaining the title-deeds from the heir at law, until she restores them, by alienation of the lands assigned her for a greater estate than she has in them; and she might also be barred of her dower by levying a fine, or suffering a recovery during her marriage, while those assurances existed. But the most usual means of barring

dower are by jointures, made under the provisions of the 27 Hen. VIII. c. 10; and by the act of the husband. Before the stat. 3 & 4 Will. IV. c. 105, a fine or recovery by the husband and wife was the only mode by which a right to dower which had *already attached* could be barred, though, by means of a simple form of conveyance, a husband might prevent the right to dower from arising at all upon lands purchased by him. By the above-mentioned statute, it is provided that no woman shall be entitled to dower out of any lands absolutely disposed of by her husband either in his life or by will, and that his debts and engagements shall be valid and effectual as against the right of the widow to dower. And further, any declaration by the husband, either by deed or will, that the dower of his wife shall be subjected to any restrictions, or that she shall not have any dower, shall be effectual. It is also provided that a simple devise of real estate to the wife by the husband shall, unless a contrary intention be expressed, operate in bar of her dower. This statute, however, affects only marriages contracted, and only deeds, &c., subsequent to the 1st of January, 1834.

Most of these alterations, as indeed may be said of many others which have recently been made in the English real property law, have for some years been established in the United States of America. An account of the various enactments and provisions in force in the different States respecting dower may be found in 4 Kent's *Commentaries*, p. 34-72. (Blackstone, *Comm.*; Park *On Dower*.)

DRAMATIC LITERARY PROPERTY. [COPYRIGHT.]

DRAWBACK is a term used to signify the sum paid back on the re-exportation of goods, upon the importation of which an equal sum has already been paid as duty. A drawback is also allowed on the exportation of articles which are subject to excise duties. The object of this repayment is to enable the exporter to sell his goods in foreign markets unburthened with duties; and it is clear that if duties are required to be paid on the first importation, no transit trade can possibly be carried on unless drawback is allowed by the government. Payments of this nature are in principle essentially different from bounties, which enable the exporter to sell his goods at less than they cost; but a drawback does not interfere with the natural cost. [BOUNTY.] Previous to the establishing of the warehousing system in this country in 1803, and when the payment of duties on all foreign and colonial merchandise, with the exception of tobacco and East India goods, was required on the first importation, drawbacks were in all cases allowed upon re-exportation. This course was injurious to trade, because of the larger capital which was necessarily employed, and it was prejudicial to the revenue because it gave rise to numerous and ingenious fraudulent expedients, by means of which greater sums were received for drawback than had been originally paid by the importers; besides which, the machinery required for the collection and repayment of duties was more complicated and expensive than would otherwise have been necessary. The amount of customs' duty collected in Great Britain before the passing of the Warehousing Act in 1803 was usually from twice to three times as great as the sum paid into the exchequer, the greater part of the receipts being absorbed by drawbacks, bounties, and charges of management.

The only articles upon which drawback was paid at our Custom-houses, and the amount of repayment in 1844, were as follows:—

	£
Coffee . . .	146
Rice in the husk .	3,937
Thrown silk . .	30
Sugar . . .	892
Timber . . .	1,115
Tobacco and Snuff .	20,058
Wine . . .	65,489
Total . .	91,669

The drawback on timber is not indeed a payment made on its re-exportation, but an allowance upon such quantities as are used in the mines. The quantities of thrown silk, sugar, and tobacco entitled to drawback had already paid duty previous to their undergoing a manufacturing

process, and drawback on wine is only paid when exported in bottles, for transferring it to which from the cask it was, until lately, necessary to pay the duty. In 1830 the sum paid for various drawbacks amounted to 3,300,000*l.*; and in 1836 to 781,154*l.* The reduction has been obtained by totally repealing many duties, and by affording greater opportunity of exportation from the warehouses.

DRAWER. [EXCHANGE, BILL OF.]

DROITS OF ADMIRALTY are the perquisites attached to the office of Admiral of England (or Lord High Admiral). Prince George of Denmark, the husband of Queen Anne and Lord High Admiral, resigned the right to these droits to the Crown for a salary, as Lord High Admiral, of 7000*l.* a year. When the office was vacant they belonged of right to the Crown. Of these perquisites the most valuable is the right to the property of an enemy seized on the breaking out of hostilities. Large sums were obtained by the Crown on various occasions in the course of the last war from the seizure of the enemy's property, most of which however was eventually given up to the public service. In the arrangement of the Civil List, during the last two reigns, it was settled that whatever Droits of Admiralty accrued were to be paid into the Exchequer for the use of the public. The Lord High Admiral's right to the tenth part of the property captured on the seas has been relinquished in favour of the captors.

DUCHIES OF CORNWALL AND LANCASTER. [CIVIL LIST, p. 515.]

DUELLING. The rise of the practice of duelling is to be referred to the trial by battle which obtained in early ages, jointly with the single combat or tournament of the age of chivalry, which again most probably owed its own existence to the early trial by battle. The trial by battle, or duel (as it was also called), was resorted to, in accordance with the superstitious notions of the time, as a sure means of determining the guilt or innocence of a person charged with a crime, or of adjudicating a disputed right. It was thought that God took care to see that, in every case, innocence was vindicated and justice observed. The trial by battle was introduced into England by William the Conqueror, and established in three cases; viz., in the court-martial or court of chivalry, in appeals of felony, and in civil cases upon issue joined in a writ of right. Once established as a mode of trial, the duel was retained after the superstition which had given rise to it had died away, and was resorted to for the purpose of wreaking vengeance, or gaining reputation by the display of courage. Then came the age of chivalry, with its worship of punctilio and personal prowess, its tilts and tournaments, and the duel, originally a mode of trial established by law, became in time (what it now is) a practice dependent on fashion or certain conventional rules of honour.

It is an instance of the length of time for which abused and improper obsolete laws are often allowed to encumber the English statute-book, that the trial by battle in appeals of felony and writs of right was only abolished in 1818. An appeal of felony had been brought in the previous year, in a case of murder, and the appellee had resorted to his right of demanding wager of battle (Ashford *v.* Thornton, 1 Barn. and Ald. 405). The appeal was not proceeded with, so that the barbarous encounter did not take place. [APPEAL.]

The law of England makes no distinction between the killing of a man in a duel and other species of murder: and the seconds of both parties are also guilty of murder. But the practice of duelling is maintained by fashion against laws human and divine; and it may be well to enter a little into the reasons of this practice, without reference to its illegality, or to its variance, which no one will dispute, with Christianity.

The professed object of a duel is *satisfaction.* The affronter professes to have satisfied the man whom he has affronted, and the challenger professes to have been satisfied by the man whom he has challenged, after they have fired, or have had an opportunity of firing, pistols at one another. That this satisfaction is of the nature of *reparation*, is of course out of the question. Satisfaction in this its most obvious sense, or reparation for an injury, cannot be effected by the injured man

firing at his injurer, and being fired at in return.

The satisfaction furnished by a duel is of a different sort, and of a sort which, were it distinctly comprehended, would at once show the absurdity of the practice; it is a satisfaction occasioned by the knowledge that, by standing fire, the challenger has shown his courage, and that the world cannot call him coward. Now it is clear that there would be no reason for dissatisfaction on this point, previous to the fighting of the duel, and therefore no reason for seeking satisfaction of this sort, were it not that the practice of duelling existed. Were men not in the habit of fighting duels, and therefore not expected to expose themselves to fire after having received an affront, there would be no ground for calling their courage into question, and therefore no necessity for satisfying themselves that the world thinks them courageous. The practice of duelling thus causes the evil which it is called in to remedy,—the injury for which it is required to administer satisfaction. And every one who saw this would immediately see the absurdity of the practice. But the word *satisfaction* is conveniently ambiguous. When one speaks of it, or hears it spoken of, one thinks of that satisfaction which means reparation for an injury, and which is not the satisfaction furnished by the duel. Thus are men the dupes of words.

The real object then of the duel is, in most cases, to satisfy the person who provokes it, or who sends the challenge, that the world does not suspect him of a want of courage; and it will be useful to observe, in passing, that the duel furnishes this sort of satisfaction as well to the man who gave the affront, as to him who was affronted. Its object also, in certain cases, is doubtless to gratify the vengeance of the man who has received an affront. But in all cases the object which is professed, or generally understood to be professed, of satisfaction in the sense of reparation for the affront, is no more than a pretence.

But though the practice of duelling cannot effect the good of repairing an injury, it may very possibly effect other sorts of good. The advantage of the practice of duelling is generally said to consist in its tendency to increase courtesy and refinement of manners; as it will be a reason for a man to abstain from giving an affront, that he will be subjected in consequence to the fire of a pistol.

Now it is clear, in the first place, that all the affronts which are constituted reasons or grounds of duels by fashion, or the law of honour or public opinion, are so constituted because they are judged by public opinion deserving of disapprobation. If then the practice of duelling did not exist, public opinion, which now constitutes these affronts grounds of a duel, as being deserving of disapprobation, would still condemn them, and, condemning them, provide men with a reason to abstain from them. Thus there would still exist a reason to abstain, in all cases in which the practice of duelling now provides a reason. But, in the second place, the practice of duelling itself depends on public opinion alone. A man fights because public opinion judges that he who in certain cases refuses to challenge or to accept a challenge is deserving of disapprobation: he fights from fear of public opinion. If he abstain from giving an affront on account of the existence of the practice of duelling, it is because the fear of public opinion would oblige him to fight; he abstains then from fear of public opinion. Now we have seen that there would be the fear of public opinion to deter him from the affronts which now lead to duels, if the practice of duelling did not exist. Thus the practice of duelling does not in any case provide a reason to abstain, which public opinion would not provide without its aid. As a means then of increasing courtesy and refinement of manners, the practice of duelling is unnecessary; and inasmuch as its tendency to polish manners is the only advantage which can, with any show of probability, be ascribed to it, there will be no good effects whatever to set against the evil effects which we now proceed to enumerate. There will be no difficulty in striking the balance between good and evil.

First, the practice of duelling is disadvantageous, inasmuch as it often diminishes the motives to abstain from an af-

front. We have seen that the existence of this practice leads public opinion to employ itself concerning the courage of the two persons, who (the one having affronted and the other having been affronted) are in a situation in which, according to custom or fashion, a duel takes place. Public opinion then is diverted by the practice of duelling from the affront to the extraneous consideration of the courage of the two parties. It censures the man who has given the affront only if he shrinks from a duel; and even goes so far as to censure the man who has received the affront for the same reason. Thus in a case where a man, reckless of exposing his life, is disposed to give affronts, he is certain that he can avert censure for an affront by being ready to fight a duel; and in a case where a bold or reckless man is disposed to affront one who is timid, or a man expert with the pistol one who is a bad shot, he can reckon on the man whom he affronts refusing to fight, and on censure being thus diverted from himself who has given an affront to him who has shown want of courage. It is well observed in a very ingenious article on this subject in the 'Westminster Review:'—" It is difficult to conceive how the character of a bully, in all its shades and degrees, would be an object of ambition to any one, in a country where the law is too strong to suffer actual assaults to be committed with impunity, where public opinion is powerful, and duelling not permitted; but where duelling is in full vigour, it is very easy to understand that the bully may not only enjoy the delight of vulgar applause, but the advantages of real power" (vol. iv. p. 28).

Secondly, the practice of duelling is disadvantageous, as increasing the amount of injury which one man can do to another by an affront.

Thirdly, the practice of duelling affords means for the gratification of vengeance; and thus tends to hurt the characters of individuals, by the encouragement both of that feeling, and of hypocrisy in those who, thirsting for vengeance, and daring not to own it, profess (in the common ambiguous phrase) to be seeking for satisfaction.

Fourthly (which is the most important consideration), there are the evils entailed by the deaths which the practice of duelling brings about—evils entailed both on the persons dying, and on their surviving relatives and friends. It is an evil that a man should be cut off from life, "unhouseled, unappointed, unaneled." It is an evil that he should be taken from relatives and friends to whom his life is, in different ways and degrees, a source of happiness; from parents who have centred in him their hopes, and to whom, in their declining years, he might be a comfort, or from a wife and children who look to him for support.

Such are the evil effects of the practice of duelling; and there being no list of good effects to set against them, it follows immediately that the tendency of the practice is, on the whole, evil. There arises, then, the question, how is it to be got rid of?

A mild and judicious legislation—one which takes into account, and does not set itself violently against, public opinion, may do much. The punishment assigned to the crime of duelling should be *popular*. It should be a punishment which does not tend to excite sympathy for the criminal, and thus defeat its own object; for where an opinion prevails that a punishment is too severe, witnesses, jurors, judges are provided by the punishment itself with motives to shield the criminal. It is clear that the punishment of death, which the law of England now assigns, is not popular; and it is clear further that, in consequence of this, it is almost entirely nugatory. Public opinion, which favours duelling, sets itself against the punishment of death, and renders legislation vain.

Were a man who had killed his antagonist in a duel compelled by the law to support, or assist in supporting, some of his surviving relatives, this, so far as it would go, would be a punishment popular and efficacious. Public opinion would then infallibly be against the man who, having incurred the penalty, should endeavour to avoid it. And such a punishment as this would furthermore be superior to the punishment of death, as being susceptible of graduation—as furnishing

reparation to a portion of those who have been most injured, and as preserving the offender, that he may have all those opportunities, which his natural life will afford him, of improving himself and of benefiting others.

A mild and judicious legislation would tend to guide and improve public opinion; whereas such a legislation as the present tends only to confirm it in its evil ways.

And as legislation may and should assist the formation of a right public opinion, so is it possible and desirable to operate independently on public opinion, either that the absence of good legislation may, as far as is possible, be compensated for, or that good legislation may be assisted. This operation on public opinion must be brought about by the endeavours of individuals. It is the duty of each man to oppose this practice to the utmost extent of his power, both by precept and example,—to abstain from challenging when he has received an affront, and to refuse a challenge when he is considered to have given one, making public in both cases, so far as his situation allows, his reasons for the course which he takes, and thus producing an impression against the practice as widely as he can. In the second of these two cases, he must either be able to defend, or he must apologize for, that which was considered an affront. If he can defend it, or show that the evil to the person insulted was overbalanced by the good accruing to others, he refuses rightly to be fired at for having been the author of a benefit; or, if unable to defend the affront, he apologizes for it, he performs a manly and a rational part in refusing to fire at a man whose feelings he has wantonly injured.

This duty is peculiarly incumbent on public men, whose sphere of influence is larger, and whose means of producing good effects by example are therefore greater, than those of others. A public man who should at all times refuse to challenge or to accept a challenge, resting his refusal on the ground of the evil tendency of duelling, not of the infraction of some other duty which an accident has in his case connected with it (as the violation of an oath), and who should at the same time preserve himself from suspicion or reproach by circumspection in speech, by a manly defence, where it is possible, and, where it is not, by a manly apology, would be a mighty aid for the extirpation of this practice.

The following three new articles of war were issued in the course of last year (1844), with a view to the abatement of duelling in the army:—

1. Every officer who shall give or send a challenge, or who shall accept any challenge to fight a duel with another officer, or who, being privy to an intention to fight a duel, shall not take active measures to prevent such duel, or who shall upbraid another for refusing or for not giving a challenge, or who shall reject, or advise the rejection, of a reasonable proposition made for the honourable adjustment of a difference, shall be liable, if convicted before a general court-martial, to be cashiered, or suffer such other punishment as the court may award.

2. In the event of an officer being brought to a court-martial for having acted as a second in a duel, if it shall appear that such officer had strenuously exerted himself to effect an adjustment of the difference on terms consistent with the honour of both parties, and shall have failed through the unwillingness of the adverse parties to accept terms of honourable accommodation, then our will and pleasure is, that such officer shall suffer such punishment as the court may award.

3. We hereby declare our approbation of the conduct of all those who, having had the misfortune of giving offence to, or injured or insulted others, shall frankly explain, apologize, or offer redress for the same; or who, having had the misfortune of receiving offence, injury, or insult from another, shall cordially accept frank explanations, apology, or redress for the same; or who, if such explanations, apology, or redress are refused to be made or accepted, shall submit the matter to be dealt with by the commanding officer of the regiment or detachment, fort or garrison; and we accordingly acquit of disgrace, or opinion of disadvantage, all officers and soldiers who, being willing to make or accept such redress, refuse to accept challenges, as they will only have acted as is suitable to the character of

honourable men, and have done their duty as good soldiers, who subject themselves to discipline.

DUKE, the title given to those who are in the highest rank of nobility in England. The order is not older in England than the reign of king Edward III. Previously to that reign those whom we now call the nobility consisted of the barons, a few of whom were earls. Neither baron nor earl was in those days, as now, merely a title of honour; the barons were the great tenants in chief, and the earls important officers. It does not appear that in England there was ever any office or particular trust united with the other titles of nobility, viscount, marquis, and duke. They seem to have been from the beginning merely honorary distinctions. They were introduced into England in imitation of our neighbours on the Continent. Abroad however the titles of duke and marquis had been used to designate persons who had political power, and even independent sovereignty. The czar was duke of Russia or Muscovy. There were the dukes of Saxony, Burgundy, and Aquitaine: persons with whom the earls of this country would have ranked, had they been able to maintain as much independence on the king as did the dukes on the continent of the Germanic or Gallic confederacy.

The English word duke is from the French duc, which originally was used to signify "a man of the sword (a soldier) and of merit, who led troops." The remote origin is the Latin dux, a "guide," or a "military commander." The word is used by the Latin writers to signify generally any one who has military command, but sometimes "dux," as an inferior officer, is contrasted with "imperator," commander in chief. Under the Lower Empire, dux was the title of a provincial general, who had a command in the provinces. In the time of Constantine there were thirty-five of these military commanders stationed in different parts of the empire, who were all duces or dukes, because they had military command. Ten of these dukes were also honoured with the title of comtes [COUNT] or counts. (Gibbon, *Decline and Fall*, &c., cap. 17.)

The German word *herzog*, which corresponds to our duke, signifies "a leader of an army."

The first person created a duke in England was Edward, Prince of Wales, commonly called the Black Prince. He was created duke of Cornwall in parliament, in 1335, the eleventh year of king Edward III. In 1350, Henry, the king's cousin, was created duke of Lancaster, and when he died, in 1361, his daughter and heir having married John of Gaunt, the king's son, he was created duke of Lancaster, his elder brother Lionel being made at the same time duke of Clarence. The two younger sons of king Edward III. were not admitted to this high dignity in the reign of their father: but in the reign of Richard II. their nephew Edmund was made duke of York and Thomas duke of Gloucester.

The dignity was thus at the beginning kept within the circle of those who were by blood very nearly allied to the king, and we know not whether the creation of the great favourite of king Richard II., Robert Vere, earl of Oxford, duke of Ireland, and marquis of Dublin, is to be regarded as an exception. Whether, properly speaking, an English dignity or an Irish, it had but a short endurance, the earl being so created in 1385 and attainted in 1388.

The persons who were next admitted to this high dignity were of the families of Holland and Mowbray. The former of these was half-brother to king Richard II.; and the latter was the heir of Margaret, the daughter and heir of Thomas de Brotherton, a younger son of king Edward I., which Margaret was created duchess of Norfolk in 1358. This was the beginning of the dignity of duke of Norfolk, which still exists, though there have been several forfeitures and temporary extinctions. Next to them, not to mention sons or brothers of the reigning king, the title was conferred on one of the Beauforts, an illegitimate son of John of Gaunt, who was created by king Henry V. duke of Exeter. John Beaufort, another of this family, was made duke of Somerset by king Henry VI.

In the reign of Henry VI. the title was granted more widely. There were at

one time ten duchesses in his court. The families to whom the dignity was granted in this reign were the Staffords, Beauchamps, and De la Poles. In 1470, under the reign of Edward IV., George Nevil was made duke of Bedford, but he was soon deprived of the title, and Jasper Tudor was made duke of Bedford by his nephew king Henry VII. in the year of his accession.

King Henry VIII. created only two dukes, and both were persons nearly connected with himself; one was his own illegitimate son, whom he made duke of Richmond, and the other was Charles Brandon, who had married the French queen, his sister, and who was made by him duke of Suffolk. King Edward VI. created three dukes; his uncle, Edward Seymour, the Protector, duke of Somerset (from whom the present duke of Somerset derives his descent, and, by reversal of an attainder, his dignity), Henry Grey, duke of Suffolk, and John Dudley, duke of Northumberland.

Queen Elizabeth found on her accession only one duke, Thomas Howard, duke of Norfolk, attainder or failure of male issue having extinguished the others. He was an ambitious nobleman, and aspiring to marry the queen of Scotland, Elizabeth became jealous of him: he was convicted of treason, beheaded, and his dignity extinguished in 1572; and from that time there was no duke in the English peerage except the sons of king James I., till 1623, when Ludovick Stuart, the king's near relative, was made duke of Richmond, which honour soon expired. In 1627 George Villiers was created duke of Buckingham, and he and his son were the only dukes in England till the civil wars, when another of the Stuarts was made duke of Richmond, and the king's nephew, best known by the name of Prince Rupert, duke of Cumberland.

In the first year after the return of Charles II. from exile, he restored the Seymours to their rank of dukes of Somerset, and created Monk, the great instrument of his return, duke of Albemarle. In 1663 he began to introduce his illegitimate issue into the peerage under the title of duke, his son James being made in that year duke of Monmouth. In 1664 he restored to the Howards the title of duke of Norfolk; and in 1665 he created a Cavendish, who had held a high military command in the civil war, duke of Newcastle. In 1682 he created the marquis of Worcester duke of Beaufort. As for the rest the dignity was granted only to issue of the king or to their mothers. The only duke created by king James II. was the duke of Berwick, his natural son.

Of the families now existing, beside those who are descended from king Charles II., only the Howards, the Seymours, and the Somersets date their dukedoms from before the Revolution. The existing dukedoms originally given by Charles II. to his sons are Grafton, Richmond, and St. Albans. To the duke of Richmond Charles granted letters patent which entitled him to a tonnage duty on coal. In 1799 this duty was commuted for an annuity of 19,000*l.* a-year. The duke of Grafton is still paid a pension of 5843*l.* a-year out of the Excise revenue, and 3407*l.* out of the Post-office revenue. The duke of St. Albans is Hereditary Grand Falconer of England. Under king William and queen Anne several families which had previously enjoyed the title of earls were advanced to dukedoms, as Paulet duke of Bolton, Talbot duke of Shrewsbury, Osborne duke of Leeds, Russell duke of Bedford, Cavendish duke of Devonshire, Holles duke of Newcastle, Churchill duke of Marlborough, Sheffield duke of Buckinghamshire, Manners duke of Rutland, Montagu duke of Montagu, Douglas duke of Dover, Gray duke of Kent, Hamilton duke of Brandon; besides members of the royal family and Marshal Schomberg, who was made an English peer as duke of Schomberg. This great accession gave an entirely new character to the dignity. King George I., besides the dukedoms in his own family, made Bertie duke of Ancaster, Pierrepoint duke of Kingston, Pelham duke of Newcastle, Bentinck duke of Portland, Wharton duke of Wharton, Brydges duke of Chandos, Campbell duke of Greenwich, Montagu duke of Manchester, Sackville duke of Dorset, and Egerton duke of Bridgewater. George II. created no duke out of his own family, and the only addi-

tion he can be said to have made to this branch of the peerage was by enlarging the limitation of the Pelham dukedom of Newcastle so as to comprehend the Clintons, by whom the dukedom is now possessed. From 1720 to 1766 there was no creation of an English duke except in the royal house. In that year the representative of the ancient house of Percy was made duke of Northumberland, and the title of duke of Montagu, which had become extinct, was revived in the Brudenels, the heirs. The same forbearance to confer this dignity existed during the remainder of the reign, and during the reign of George IV. no dukedom was created out of the royal house, till the eminent services of the duke of Wellington marked him out as deserving the honour of the highest rank which the king has it in his power to confer. His dukedom was created in 1814, forty-seven years after the creation of a duke of Northumberland. The marquis of Buckingham was advanced to the rank of duke of Buckingham and Chandos in 1822, so that for a hundred years, namely from 1720 to 1822, only four families were admitted to this honour.

During the reign of William IV. two dukedoms were created, Gower duke of Sutherland, and Vane duke of Cleveland.

The whole number of dukes in the English peerage is at present twenty, exclusive of the blood royal. There are seven Scottish dukes (Argyll, Atholl, Buccleuch, Hamilton, Lennox, Montrose, and Roxburghe), of whom one (Hamilton) is also an English duke. The only Irish duke is the duke of Leinster.

All the dukes of England have been created by letters patent in which the course of succession has been plainly pointed out. Generally the limitation is to the male heirs of the body.

DUTY. [RIGHT.]

E.

EARL. The title of count or earl, in Latin *comes*, is the most ancient and widely spread of the subordinate or subject titles. This dignity exists under various names in almost every country in Europe. By the English it is called earl, a name derived to us from the ealderman of the Anglo-Saxons and the eorle of the Danes. By the French it is called *comte*, by the Spaniards *conde*, and by the Germans *graf*, under which title are included several distinct degrees of rank—landgraves or counts of provinces, palsgraves, or counts palatine, markgraves, or counts of marches or frontiers (whence marchio or marquess), burggraves, or counts of cities, counts of the empire, counts of territories, and several others. [COUNT; BARON.]

After the battle of Hastings, William the Conqueror recompensed his followers with grants of the lands of the Saxon nobles who had fallen in the battle, to be held of himself as strict feuds; and having annexed the feudal title of earl to the counties of the Saxon earls (with whom the title was only official), he granted them to his principal captains.

These earldoms were of three kinds, all of which were by tenure. The first and highest was where the dignity was annexed to the seisin or possession of a whole county, with "jura regalia." In this case the county became a county palatine, or principality, and the person created earl of it acquired royal jurisdiction and seigniory. In short, a county palatine was a perfect feudal kingdom in itself, but held of a superior lord. The counties of Chester, Pembroke, Hexham, and Lancaster, and the bishopric of Durham, have at different times been made counties palatine; but it does not appear that the title of earl palatine was given to the most ancient and distinguished of them, the earl of Chester, before the time of Henry II., surnamed Fitz-Empress, when the title of palatine was probably introduced from the Germanic Empire. The earls of Chester created barons and held parliaments, and had their justiciaries, chancellors, and barons of their exchequer. This county palatine reverted to the crown in the reign of Henry III. The second kind of earls were those whom the king created earls of a county, with civil and criminal jurisdiction, with a grant of the third part of the profits of the county court, but without giving them actual seisin of the county. The third

kind was where the king erected a large tract of land into a county, and granted it with civil and criminal jurisdiction to be held *per servitium unius comitatûs.*

Under the early Norman kings, all earls, as well as barons, held their titles by the tenure of their counties and baronies; and the grant, or even purchase, with the licence of the king, of an earldom or a barony, would confer the title on the grantee or purchaser; but with the solitary exception of the earldom of Arundel, earldoms by tenure have long since disappeared, and in late times the title has been conferred by letters patent under the great seal. Earls have now no local jurisdiction, power or revenue, as a consequence of their title, which is no longer confined to the names of counties or even of places; several earls, as Earl Spencer, Earl Grey, and others, have chosen their own names, instead of local titles.

The coronet of an English earl is of gold surmounted with pearls, which are placed at the extremity of raised points or rays, placed alternately with foliage. The form of their creation, which has latterly been superseded by the creation by letters patent, was by the king's girding on the sword of the intended earl, and placing his cap and coronet on his head and his mantle on his shoulders. The king styles all earls, as well as the other ranks of the higher nobility or peerage, his cousins. An earl is entitled right honourable, and takes precedence next after marquesses, and before all viscounts and barons. When a marquess has an earldom, his eldest son is called earl by courtesy; but notwithstanding this titular rank, he is only a commoner, unless he be summoned to the House of Lords by such title. So the eldest sons of dukes are called earls where their fathers have an earldom but no marquisate, as the duke of Norfolk.

The number of earls in the House of Lords is at present 116.

EARL MARSHAL OF ENGLAND, one of the great officers of state, who marshals and orders all great ceremonials, takes cognizance of all matters relating to honour, arms, and pedigree, and directs the proclamation of peace and war. The *curia militaris*, or court of chivalry, was formerly under his jurisdiction, and he is still the head of the heralds' office, or college of arms. Till the reign of Richard II., the possessors of this office were styled simply Marshals of England: the title of Earl Marshal was bestowed by that king in 1386 on Thomas lord Mowbray, Earl of Nottingham. The office is now hereditary in the family of Howard, and is enjoyed by the duke of Norfolk. (Chamberlaine's *State of England;* Dallaway's *Inquiries into the Origin and Progress of Heraldry in England*, 4to. Glouc. 1793, pp. 93-95.)

EARTHENWARE. According to the census of 1841, the number of persons in Great Britain employed in this important and most useful manufacture ('Pottery, China, and Earthenware,') was 24,774, of whom 17,442 were returned for Staffordshire, which is the great seat of the manufacture. The district in this county known as 'The Potteries' is about a mile from the borders of Cheshire, and extends through a distance of more than seven miles, in which there are towns and villages so close to each other, that to a stranger, the whole appears like one straggling town. There are likewise extensive manufacturers of earthenware and porcelain in Yorkshire and Worcester, and the commoner kinds of ware are made in many parts of England.

Earthenware is a general term applicable to all utensils composed of earthen materials, but it is usual to distinguish them into three different kinds: the brown stone-ware, red pans and pots, and articles of a similar kind are called pottery; and porcelain is distinguished from earthenware as being a semi-vitrified compound, in which one portion remains infusible at the greatest heat to which it can be exposed, while the other portion vitrifies at a certain heat, and thus intimately combines with and envelopes the infusible part, producing a smooth, compact, shining and semi-transparent substance well known as the characteristic of porcelain.

Until the beginning of the eighteenth century the manufacture of earthenware was confined to a few coarse articles, which were devoid of taste. Earthenware was largely imported from Holland, and su-

perior kinds from Germany and France. Even till nearly the close of the century the porcelain of China was still in common use on the tables of the wealthy, as the home manufacture, generally speaking, had not established its reputation. The improvement of the earthenware manufacture originated with Mr. Wedgwood, who carried it to great perfection. He availed himself of the services of artists and men of taste; and by this association of the manufacture with the fine arts it has been still further improved.

In the five years from 1831 to 1835, the declared value of earthen manufactures exported gradually rose from 461,090*l.* in 1831 to 540,421*l.* in 1835. The value of the exports to the United States of North America in 1835 was 246,220*l.* The number of pieces of earthenware exported and the real value of the same for the last four years were as under:

	Pieces.	£.
1841	53,150,903	600,759
1842	52,937,454	555,430
1843	55,597,705	629,148
1844	. . . .	751,279

The countries to which the largest quantities were exported in 1842 were as follows:—

	£.
United States of North America	168,873
Brazil	38,976
British North America . .	35,152
Germany	34,445
East India Company's territories and Ceylon . .	28,891
British West Indies . .	26,155
Holland	24,645
Cuba and Foreign West Indies	18,024
Italy and Italian Islands .	17,201
Rio de la Plata . . .	15,946
Chili	14,414
Denmark	12,434
Peru	11,421
Sumatra, Java, and Indian Archipelago	11,198

The earthenware manufacture in France is far inferior to that of England. (M'Gregor's Statistics.) In the United States of North America, the number of potteries in 1840 was 659; but no earthenware is exported.

EASEMENT (from the French words aise, aisement, ease) is defined by the old law writers as a service or convenience which one neighbour hath of another by charter or prescription without profit; as a way through his ground, a sink, or the like. It includes rights of common, ways, water-courses, antient lights, and various other franchises, issuing out of corporeal hereditaments, and sometimes, though inaccurately, the term is applied to rights of common.

At the common law these rights (which can only be created and transferred by deed) might be claimed either under an immemorial custom or by prescription; but twenty years' uninterrupted and unexplained enjoyment of an easement formerly constituted sufficient evidence for a jury to presume that it originated in a grant by deed; except in the city of London, where the presumption of a grant from twenty years' possession of windows was excluded by the custom which required that there should exist "some written instrument or record of an agreement." Nonuser during the same period was also considered an extinguishment of the right, as raising a presumption that it had been released.

By the statute 2nd & 3rd William IV. cap. 71, several important alterations have been made with regard to this description of property: forty years' enjoyment of any way or other easement, or any watercourse, and twenty years' uninterrupted "access and use of any light to and for any dwelling-house," &c., now constitute an indefeasible title in the occupier, unless he enjoys "by some consent or agreement expressly given or made for that purpose by deed or writing." The same statute also enacts that nonuser for the like number of years (according to the description of the particular right) shall preclude a litigating party from establishing his claim to it.

The easements of the English correspond to the Servitutes of the Roman and the Servitudes of the French law. (*Code Civil*, liv. ii. tit. 4, *Des Servitudes ou Services Fonciers.*)

The Roman Servitutes comprehended those rights which a man had in the property of another, and in a corporeal thing. The subject of easements forms a large head in the Roman Law, which was so far

elaborated as to form a basis on which modern decisions may repose. The title De Servitutibus in the eighth book of the Digest contains the chief rules of Roman law on this subject, which have been discussed by various modern writers, as Mühlenbrach, *Doctrina Pandectarum*, p. 268, &c.; Savigny, *Das Recht des Besitzes*, p. 525, 5th ed.; Dirksen, *Zeitschrift für Geschichtliche Rechtswissenschaft*, vol. ii.; Puchta, *Cursus der Institutionen*, ii. 739, &c.

EASTER OFFERING. [OFFERINGS.]

EAST INDIA COMPANY. This association originated from the subscriptions, trifling in amount, of a few private individuals. It gradually became a commercial body with gigantic means, and next, by the force of unforeseen circumstances, assumed the form of a sovereign power, while those by whom it was directed continued in their individual capacities to be without power or political influence, thus presenting an anomaly without a parallel in the history of the world.

The Company was first formed in London in 1599, when its capital, amounting to 30,000*l.*, was divided into 101 shares. In 1600 the adventurers obtained a charter from the crown, under which they enjoyed certain privileges, and were formed into a corporation for fifteen years, with the title of "The Governor and Company of Merchants of London trading to the East Indies." Under this charter the management of the company's affairs was intrusted to twenty-four members of a committee chosen by the proprietors from among their own body, and this committee was renewed by election every year.

The first adventure of the association was commenced in 1601. In the month of May of that year five ships, with cargoes of merchandise and bullion, sailed from Torbay to India. The result was encouraging, and between 1603 and 1613 eight other voyages were performed, all of which were highly profitable, with the exception of the one undertaken in the year 1607. In the other years the clear profits of the trade varied from 100 to 200 per cent. upon the capital employed. At this time the trading of the company was not confined to the joint stock of the corporation, but other adventurers were admitted, who subscribed the sums required to complete the lading of the ships, and received back the amount, together with their share of the profits, at the termination of every voyage.

The charter of the Company was renewed for an indefinite period in 1609, subject to dissolution on the part of the government upon giving three years' notice to that effect.

In 1611 the Company obtained permission from the Mogul to establish factories at Surat, Ahmedabad, Cambaya, and Goga, in consideration of which permission it agreed to pay to that sovereign an export duty upon all its shipments at the rate of 3½ per cent.

After 1612 subscriptions were no longer taken from individuals in aid of the joint-stock capital, which was raised to 420,000*l.*, and in 1617-18 a new fund of 1,600,000*l.* was subscribed. This last capital, although managed by the same directors, was kept wholly distinct from the former stock, and the profits resulting from it were separately accounted for to the subscribers.

The functions of government were first exercised by the Company in 1624, when authority was given to it by the king to punish its servants abroad either by civil or by martial law, and this authority was unlimited in extent, embracing even the power of taking life.

In 1632 a third capital, amounting to 420,700*l.*, was raised, and its management, although confided to the same directors, was also kept distinct from that of the first and second subscriptions. It is uncertain whether the capitals here severally mentioned were considered as permanent investments, or were returned to the subscribers at the termination of each different adventure.

A rival association, formed in 1636, succeeded in obtaining from the king, who accepted a share in the adventure, a licence to trade with India, notwithstanding the remonstrances of the chartered body. After carrying on their trade for several years in a spirit of rivalry which was fatal to their prosperity, the two

bodies united in 1650, and thenceforward carried on their operations under the title of "The United Joint-Stock."

In 1652 the Company obtained from the Mogul, through the influence of a medical gentleman, Mr. Boughton, who had performed some cures at the Imperial Court, the grant of a licence for carrying on an unlimited trade throughout the province of Bengal without payment of duties.

Some proprietors of the Company's stock, becoming dissatisfied with the management of the directors, obtained from Cromwell, in 1655, permission to send trading vessels to India, and nominated a committee of management from their own body, for which they assumed the title of "The Merchant Adventurers." The evils to both parties of this rivalship soon became apparent, and in about two years from the commencement of their operations the Merchant Adventurers threw their separate funds into the general stock under the management of the directors. On this occasion a new subscription was raised to the amount of 786,000*l.* In April, 1661, a new charter was granted to the Company, in which all its former privileges were confirmed, and the further authority was given to make peace or war with or against any princes and people "not being Christians;" and to seize all unlicensed persons (Europeans) who should be found within the limits to which its trade extended, and to send them to England.

The first factory of the English was at Bantam, in Java, established in 1602. In 1612 the Mogul granted certain privileges at Surat, which was for a long time the centre of the English trade. In 1639 permission was obtained to erect a fortress at Madras. In 1652 the first footing was obtained in Bengal through the influence of Mr. Boughton, as already mentioned. n 1668 the Company obtained a further settlement on the western coast of the peninsula by the cession in its favour of the island of Bombay, made by Charles II., into whose hands it had come as part of the marriage portion of the Princess Catherine of Portugal. At the same time the Company was authorized to exercise all the powers necessary for the defence and government of the island.

At the close of the seventeenth century the three presidencies, Bengal, Madras, and Bombay, were distinguished as they still are, but it was not until 1773 that Bengal became the seat of the supreme government.

The first occasion on which the Company was brought into hostile collision with any of the native powers of India occurred in the beginning of 1664, when Sevajee, the founder of the Maharatta States, found occasion, in the prosecution of his plans, to attack the city of Surat. On this occasion the native inhabitants fled; but the members of the British factory, aided by the crews of the ships in the harbour, made a successful resistance, and forced Sevajee to retire. To show his satisfaction at the conduct of the Europeans upon this occasion, the Mogul accompanied the expression of his thanks with an extension of the trading privileges enjoyed by the Company. Another attack made upon Surat by the Maharattas in 1670 was repelled with equal success.

The right given to the Company by the charter of 1661 of seizing unlicensed persons within the limits above mentioned, and sending them to England, was exercised in a manner which, in 1666, produced a very serious dispute between the two houses of parliament.

For several years following the junction with the Merchant Adventurers about 1657, the trade of the Company was carried on without any serious rivalry, and with considerable success. Sir Joshua Child, who was one of the directors of the Company, in his 'Discourses on Trade,' published in 1667, represents that trade as the most beneficial branch of English commerce, employing from twenty-five to thirty sail of the finest merchant ships in the kingdom, each manned with from sixty to one hundred seamen.

In 1677-78 the whole adventure of the Company to India was 7 ships, with an investment of 352,000*l.* In 1678-79 the number of ships was 8, and the amount employed 393,950*l.* In 1679-80 there were despatched 10 ships with cargoes valued at 461,700*l.* In 1680-81, 11 ships, with the value of 596,000*l.*; and in 1681-82 there were 17 ships employed.

and the investment amounted to 740,000*l.*

In 1682-83 a project was set on foot for establishing a rival company, but it failed to obtain the sanction of the government. As one means for discouraging similar attempts in future, the Company ceased to give any detailed statements concerning the amount of the trade. This caused the public to entertain an exaggerated opinion concerning it, and tempted many private adventurers to set the regulations of the Company at defiance. These *interlopers*, as they were called, were seized by the Company's officers wherever they could be found, and under the pretext of piracy or some other crimes, they were taken before the Company's tribunals. Sentence of death was passed upon several, and the Company boasted much of the clemency that was shown in staying execution until the king's pleasure could be known; but they kept the parties meanwhile in close confinement.

A new charter, to have effect for twenty-one years, was granted in 1693, in which it was stipulated that the joint-stock of the Company, then 756,000*l.*, should be raised to 1,500,000*l.*, and that every year the corporation should export British produce and manufactures to the value of 100,000*l.* at least. The power of the crown to grant the exclusive privileges given by this charter was questioned by the House of Commons, which passed a declaratory resolution to the effect "that it is the right of all Englishmen to trade to the East Indies, or any part of the world, unless prohibited by act of parliament." The House of Commons directed an inquiry to be made into the circumstances attending the renewal of the charter in 1693, when it was ascertained that it had been procured by a distribution of 90,000*l.* amongst some of the highest officers of state. The duke of Leeds, who was charged with receiving 5000*l.*, was impeached by the Commons; and it is said that the prorogation of parliament, which occurred immediately afterwards, was caused by the tracing of the sum of 10,000*l.* to a much higher quarter.

The resolution of the House of Commons just recited, acted as an encouragement to new adventurers, many of whom, acting individually, began to trade with India; but a still more formidable rival arose in a powerful association of merchants, whose means enabled them to outbid the old Company for the favour of the government. The old Company, which had now been in existence nearly a century, was dissolved, and three years were allowed for winding up its business. In 1700 the old Company obtained an act which authorized them to trade under the charter of the new Company, of which privilege it availed itself to the amount of 315,000*l.* The existence of two trading bodies led to disputes which benefited neither. In 1702 an act was passed for uniting them, and seven years were allowed for making preparatory arrangements for their complete union. Before the expiration of these seven years various differences which had arisen between the two bodies were settled by reference to Lord Godolphin, then Lord High Treasurer, whose award was made the basis of the act 6 Anne, c. 17, which was the foundation of the privileges long enjoyed by the Company. The united bodies were entitled "The United Company of Merchants of England trading to the East Indies;" a title which was continued until 1834.

The capital stock of the Company, which in 1708 amounted to 3,200,000*l.*, was increased, under successive acts of parliament, as follows:—in 1786, 800,000*l.*; 1789, 1,000,000*l.*; 1794, 1,000,000*l.*; making its total capital 6,000,000*l.*; and upon this sum dividends are now paid: the later subscriptions were made at rates considerably above par, so that the money actually paid into the Company's treasury has been 7,780,000*l.*

The home government of the Company consists of—1st. The Court of Proprietors; 2nd. The Court of Directors; and 3rd. The Board of Control, the origin and functions of which body will be hereafter explained.

The Court of Proprietors elect the directors of the Company, declare the amount of dividend, and make bye-laws, which are binding upon the directors for the management of the Company in all respects which are not especially regu-

lated by act of Parliament. The votes of the proprietors are given according to the amount of stock which they possess. The lowest sum which entitles a proprietor to vote is 1000*l.* of stock; 3000*l.* stock entitles to two votes; 6000*l.* to three votes; and 10,000*l.* to four votes, which is the largest number of votes that can be given by any one proprietor. In 1825 the number of proprietors entitled to vote was 2003; in 1833 the number was 1976; and in 1843 there were 1880; of whom 44 were entitled each to four votes, 64 had each three, 333 had two votes, and 1439 had single votes. In 1773, when all owners of stock amounting to 500*l.* had each one vote, and none had a plurality, the number of proprietors was 2153.

The Court of Directors consists of 24 proprietors elected out of the general body. The qualification for a seat in the direction is the possession of 2000*l.* stock. Six of the directors go out of office every year; they retire in rotation, so that the term of office for each is four years from the time of election. The directors who vacate their seats may be re-elected, and generally are so, after being out of office for one year. The chairman and deputy chairman are elected from among their own body by the directors, thirteen of whom must be present to form a court.

The power of the directors is great: they appoint the governor-general of India and the governors of the several presidencies; but as these appointments are all subject to the approval of the crown, they may be said to rest virtually with the government. The directors have the absolute and uncontrolled power of recalling any of these functionaries; and in 1844 they exercised this power by recalling Lord Ellenborough, the governor-general. All subordinate appointments are made by the directors, but, as a matter of courtesy, a certain portion of this patronage is placed at the disposal of the President of the Board of Control.

The Board of Control was established by the act of parliament passed in August, 1784, and which is known as Mr. Pitt's India Bill. This board was originally composed of six privy councillors, nominated by the king; and besides these, the chancellor of the exchequer and the principal secretaries of state are, by virtue of their office, members of the board.

By an act passed in 1793 it is no longer necessary to select the members from among privy councillors. In practice the senior member, or president, ordinarily conducts the business, and on rare occasions only calls upon his colleagues for assistance. It is the duty of this board to superintend the territorial or political concerns of the Company; to inspect all letters passing to and from India between the directors and their servants or agents which have any connexion with territorial management or political relations; to alter or amend, or to keep back, the despatches prepared by the directors, and, in urgent cases, to transmit orders to the functionaries in India without the concurrence of the directors. In all cases where the proceedings of the directors have the concurrence of the Board of Control, the court of proprietors has no longer the right of interference. The salaries of the president and other officers of the Board, as well as the general expenses of the establishment, are defrayed by the East India Company.

The act 6 Anne, c. 17, already mentioned, conferred upon the Company the exclusive privilege, as regarded English subjects, of trading to all places eastward of the Cape of Good Hope to the Straits of Magalhaens; and these privileges, with some unimportant modifications, which it is not necessary to explain, were confirmed by successive acts of parliament, and continued until 1814. By the act 53 Geo. III. c. 155, passed in 1813, the Company's charter was renewed for twenty years, but received some important modifications, the trade to the whole of the Company's territories and to India generally being thrown open to British subjects under certain regulations; the trade between the United Kingdom and China was still reserved as a monopoly in the hands of the East India Company. It was also provided by the act of 1813 that the territorial and commercial accounts of the Company should be kept and arranged so as to exhibit the receipts and expenditure of each branch distinctly from those of the other branch.

The act of 1833, by which the charter was renewed for twenty years, took away from the Company the right of trading either to its own territories or the dominions of any native power in India or in China, and threw the whole completely open to the enterprise of individual merchants.

The progress of the Company's trade at different periods has not been regularly published. The following particulars, showing the annual average amount of the Company's trade in the forty years between 1732 and 1772, are from the report of the select committee of 1773:—

Exports of goods and bullion .	£742,285
Bills of exchange paid . .	247,492
Total cost of goods received .	989,777
Amount of sales of goods . .	2,171,877

The average annual profit amounted, from 1733 to 1742, to 116 per cent.; in the second ten years, to 90 per cent.; in the third, to 84 per cent.; in the fourth, to 132 per cent.; and embracing the whole forty years, the gross profit amounted to 119½ per cent. It must be borne in mind, however, that this was *gross* profit, and that the expenses of carrying on the trade according to the method employed of establishing factories were necessarily very great. In fact, they were such as to absorb the profits and to bring the Company considerably into debt: a result which it would be more correct to attribute to the political character of the Company than to its necessary commercial expenditure. In 1780 the entire value of the export goods and bullion amounted to only 401,166*l.*, a large part of which must have consisted of military stores and supplies required by the various factories and establishments of the Company. In 1784 Mr. Pitt made a great reduction in the duty on tea, and this gave a stimulus to the exports; but in each of the three years which preceded the renewal of the charter of 1793 they did not exceed one million sterling. Under the provisions of this new charter, the Company was bound to provide 3000 tons of shipping every year for the accommodation of private traders, and under this apparently unimportant degree of competition the trade of the Company increased rapidly and greatly. During the last four years of its existence, from 1810-11 to 1813-14, the average annual exports of the Company to the three Presidencies, Batavia, Prince of Wales's Island, St. Helena, and Bencoolen, and to China, amounted to 2,145,365*l.* Of this sum 102,585*l.* consisted of exports to China, and 397,481*l.* of military and other stores.

On the occasion of the renewal of its charter, viz. in 1813, the Company was obliged to make a further cession of its exclusive privileges, and stipulating only for the continuance of its monopoly in the importation of tea into this country, to allow the unrestricted intercourse of British merchants with the whole of its Indian possessions. Under these circumstances the Company found it impossible to enter into competition with private traders, whose business was conducted with greater vigilance and economy than was possible on the part of a great company; its exports of merchandise to India fell off during the ten years from 600,000*l.* in 1814-15, to 275,000*l.* in 1823-24, and to 73,000*l.* in the following year, after which all such exportation of merchandise to India on the part of the Company may be said to have ceased. The shipments to China were still continued, and large quantities of stores were also sent to India for the supply of the army and other public establishments.

In the twenty years from 1813 to 1833 the value of goods exported by the private trade increased from about 1,000,000*l.* sterling to 3,979,072*l.* in 1830, while the Company's trade fell from 826,558*l.* to 149,193*l.* The actual returns of the trade at the commencement, middle, and termination of the above twenty years, were as follows:—

	By the East India Company.	By Private Traders.
1814 .	£826,558 . .	£1,048,132
1815 .	996,248 . .	1,569,513
1822 .	606,089 . .	2,838,354
1823 .	458,550 . .	2,957,705
1831 .	146,480 . .	3,488,571
1832 .	149,193 . .	3,601,093

The impossibility, as thus shown, of the Company's entering into competition with private merchants had a powerful influence with parliament when it was last called

upon to legislate upon the affairs of India, and in the charter of 1833 not only was the monopoly of the China trade abolished, but the Company was restricted from carrying on any commercial operations whatever upon its own account, and was confined altogether to the territorial and political management of the vast empire which it has brought beneath its sway. The title of the Company is now simply "The East India Company." Their warehouses and the greater part of the property which was required for commercial purposes were directed to be sold. The real capital of the Company in 1832 was estimated at 21,000,000*l.* The dividends guaranteed by the act which abolished trading privileges is 630,000*l.*, being 10½ per cent. on a nominal capital of 6,000,000*l.* The dividends are chargeable on the revenues of India, and are redeemable by parliament after 1874.

It would extend this notice to an unreasonable length if we attempted to trace the successive wars and conquests which mark the annals of the Company. All that it appears requisite to give under this head will be found in the following chronological table of the acquisitions of the British in India and other parts of Asia.

Date.	Districts.
1757	Twenty-four Pergunnahs
1759	Masulipatam, &c.
1760	Burdwan, Midnapore, and Chittagong
1765	Bengal, Bahar, &c.
—	Company's Jaghire, near Madras
1766	Northern Circars
1775	Zamindary of Benares
1776	Island of Salsette
1778	Nagore
—	Guntoor Circar
1786	Pulo Penang
1792	Malabar, Dundigul, Salem, Barramahal, &c.
1799	Coimbatore, Canara, Wynaad, &c.
—	Tanjore
1800	Districts acquired by the Nizam in 1792 & 1799 from Sultan of Mysore
1802	The Carnatic
—	Gorruckpore, Lower Doab, Bareilly
—	Districts in Bundelcund
1804	Cuttack and Balasore
—	Upper part of Doab, Delhi, &c.
1805	Districts in Gujerat
1815	Kumaon and part of the Terraie
1817	Saugur and Huttah Darwar, &c.
—	Ahmedabad Farm
1818	Candeish
—	Ajmeer
—	Poonah, Concan, Southern Maharatta Country, &c.
1820	Lands in Southern Concan
1822	Districts in Bejapore and Ahmednuggar
1824	Singapore
1825	Malacca
1826	Assam, Aracan, Tarvi, Tenasserim
1828	Districts on the Nerbudda, Patna, Sumbhulpore, &c.
1832	Cachar
1834	Coorg, Loudhiana, &c.
1835	Jynteeah
1839	Aden
1840	Kurnoul
1843	Scinde

It has always been felt to be highly anomalous than an association of individuals, the subjects of a sovereign state, should wage wars, make conquests, and hold possession of territory in foreign countries, independent of the government to which they owe allegiance. At a very early period of the Company's territorial acquisitions, this feeling was acted upon by parliament. By the act 7 Geo. III. c. 57 (1767), it was provided, that the Company should be allowed to retain possession of the lands it had acquired in India for two years, in consideration of an annual payment to the country of 400,000*l.* This term was extended by the 9 Geo. III. c. 24, to February, 1774. The sums paid to the public under these acts amounted to 2,169,398*l.* The last of these payments, which should have been made in 1773, was not received until 1775, and could not then have been paid but for the receipt of 1,400,000*l.*, which was lent to the Company by parliament. This loan was afterwards discharged, and the possession of its territory was from year to year continued to the Company until 1781, and was then further continued for a period to terminate upon three years' notice to be given after 1st March, 1791. Under this act the Company paid to the public 400,000*l.*

in satisfaction of all claims then due. In 1793 the same privileges were extended until 1814, the Company engaging to pay to the public the sum of 500,000*l.* annually, *unless prevented by war expenditure;* but owing to the contests in which it was engaged throughout that period, two payments of 250, 000*l.* each, made in 1793 and 1794, were all that the public received under this agreement.

The act of 1813, by which the charter was renewed for twenty years from 1814, continued the Company in the possession of its territory, without stipulating for any immediate payment to the public. It contained provisions which established the right of parliament to assume possession of the Company's territories and of the revenues derived from them.

Throughout the whole of the territories held in absolute sovereignty by the East India Company, it exercises the right of ownership in the soil, not by retaining actual possession in its own hands, but by levying assessments.

The executive government of the Company's territories is administered at each of the presidencies by a governor and three councillors. The governor of Bengal is also the governor-general of India, and has a control over the governors of the other presidencies, and if he sees fit to proceed to either of those presidencies, he there assumes the chief authority. The governors and their councils have each in their district the power of making and enforcing laws, subject in some cases to the concurrence of the supreme court of judicature, and in all cases to the approval of the court of directors and the board of control. Two concurrent systems of judicature exist in India, viz., the Company's courts, and the king's or supreme courts. In the Company's courts there is a mixture of European and native judges. The jurisdiction of the king's courts extends over Europeans generally throughout India, and affects the native inhabitants only in and within a certain distance around the several presidencies: it is in these courts alone that trial by jury is established. Every regulation made by the local governments affecting the rights of individuals must be registered by the king's court in order to give it validity.

The constitution, in other respects, of the East India Company is shown by the following brief analysis of the principal clauses of the act 3 & 4 Will. IV., c. 85, which received the royal assent, 28th August, 1833, and under which its concerns are at present administered:—

The government of the British territories in India is continued in the hands of the Company until April, 1854. The real and personal property of the Company to be held in trust for the crown, for the service of India. (§ 1.)

The privileges and powers granted in 1813, and all other enactments concerning the Company not repugnant to this new act, are to continue in force until April, 1854. (§ 2.)

From 22nd April, 1834, the China and tea trade of the Company to cease. (§ 3.)

The company to close its commercial concerns and to sell all its property not required for purposes of government. (§ 4.)

The debts and liabilities of the Company are charged on the revenues of India. (§ 9.)

The governor-general in council is empowered to legislate for India and for all persons, whether British or native, foreigners or others. (§ 43.)

If the laws thus made by the governor-general are disallowed by the authorities in England, they shall be annulled by the governor-general. (§ 44.)

Any natural-born subject of England may proceed by sea to any part or place within the limit of the Company's charter having a custom-house establishment, and may reside thereat, or pass through to other parts of the Company's territories to reside thereat. (§ 81.)

Lands within the Company's territories may be purchased and held by any persons where they are resident. (§ 86.)

No native nor any natural-born subject of his majesty resident in India, shall, by reason of his religion, place of birth, descent, or colour, be disabled from holding any office or employment under the government of the Company. (§ 87.)

Slavery to be immediately mitigated, and abolished as soon as possible. (§ 88.)

Previously to the passing of this act, the Company possessed the power of arbitrary deportation against Europeans without trial or reason assigned, and British-born subjects were not only restricted from purchasing lands, but were prohibited from even renting them. Under the 87th section, if fairly carried into execution, a greater inducement than had hitherto been offered, is held out to the natives of India to qualify themselves for advancement in the social scale; a circumstance from which the best moral effects upon their characters are expected to result.

The revenue of the Indian government is not confined to its collections from the land, but consists likewise of customs' duties, stamp-duties, subsidies, and tribute from certain native states, some local taxes, and the profits arising from the monopolies of salt and opium. The following is an abstract of the principal revenues and charges of the Indian government for 1839-40:

	£.
Gross Revenue	17,577,244
Charges of Collection	2,238,507
Net Revenue	15,338,737
Indian Debt	30,703,778
Interest on Debt	1,447,453
Other Principal Charges:—	
Army	7,932,268
Civil and Political Establishments	2,018,205
Judicial Establishment	1,428,777
Provincial Police	283,440
Total Charges, exclusive of Interest on Debt and Allowances, paid under Treaties	11,663,638
Allowances and Assignments payable out of the Revenues in accordance with Treaties or other Engagements	1,596,377

Principal Charges defrayed in England in 1841-42.

	£.
Dividends to Proprietors of India Stock	632,545
Interest on Home Bond Debt	61,373
Furlough and Retired Pay to Officers	535,608
Payments on account of Her Majesty's Troops in India	400,000
Retiring Pay to ditto	60,000
Total Charges defrayed in England	2,848,618

In 1830, the total number of the military force employed at the three presidencies and subordinate settlements in India amounted to 224,444 men, and its expense to 9,474,481*l.*; but in several years subsequently a larger force has been employed.

The progress of the trade with India since the abolition of the East India Company's privileges is shown generally in the following tables:

1. Average annual number of ships and their tonnage which entered and cleared the ports of the United Kingdom, from and to the East India Company's territories and Ceylon, in the six years ending 1836, and in the six years ending 1842:

	1831-36.	1837-42.
Ships Inwards	188	329
Tons	79,204	149,064
Ships Outwards	202	323
Tons	88,920	156,141

2. Ships entered inwards and cleared outwards in the years 1838 and 1844 between the ports of the United Kingdom and Calcutta, Bombay, Madras, Ceylon, Singapore and Penang, and China:—

	1838.	1844.
Ships Inwards	318	534
Tons	128,087	247,087
Ships Outwards	307	540
Tons	143,458	239,368

The increase has been almost uniformly gradual in each year between 1838 and 1844.

3. Ships inwards and outwards in 1838 and 1844 between the ports of the United Kingdom and the following places:

	Inwards.		Outwards.	
	1838.	1844.	1838.	1844.
Calcutta	118	226	117	228
Bombay	57	109	73	132
Madras	13	22	11	39
Ceylon	16	35	14	29
Singapore & Penang	16	43	31	34
China	52	99	43	78

The proportion per cent. of the shipping

employed to and from the ports of the United Kingdom and the Cape of Good Hope, and places eastward thereof, was as follows, in 1839 and 1844:—

Inwards.	1839.	1844.
London	74·1	66·8
Liverpool	20·5	27·2
Hull & Bristol	1·95	1·9
Clyde, &c.	3·45	41
Outwards.		
London	61·7	50
Liverpool	25·5	31·9
Hull and Bristol	2·0	1·9
Clyde, &c.	10·8	16·2

4. Value of British and Irish Produce and Manufactures exported to the East India Company's Territories, and Ceylon, and to China, in the undermentioned years.

	East Indies. £.	China. £.
1834	2,576,229	842,852
1835	3,192,692	1,074,708
1836	4,285,829	1,326,388
1837	3,612,975	678,375
1838	3,876,196	1,204,356
1839	4,748,607	851,969
1840	6,023,192	524,198
1841	5,595,000	862,570
1842	5,169,888	969,381
1843	6,404,519	1,456,180

In the last of the above years, the exports to the East Indies and China (7,860,699*l.*) were between one-sixth and one-seventh of the whole of our exports, and more than double the value exported in 1834. In 1844 the exports to China were considerably more than double the value of the exports of 1843. In the ten years from 1834 to 1844 the value of the exports to the West Indies has rather declined; and to British North America the increase is not very great.

ECCLESIASTICAL COMMISSIONERS FOR ENGLAND. On the ground that it was "expedient that the fullest and most attentive consideration should be forthwith given to ecclesiastical duties and revenues," a royal commission was issued, dated 4th February, 1835, which appointed certain commissioners, and directed them "to consider the state of the several doiceses in England and Wales, with reference to the amount of their revenues and the more equal distribution of episcopal duties, and the prevention of the necessity of attaching, by commendam, to bishoprics benefices with cure of souls;" and the commissioners were further directed "to consider also the state of the several cathedral and collegiate churches in England and Wales, with a view to the suggestion of such measures as may render them conducive to the efficacy of the Established Church; and to devise the best mode of providing for the cure of souls, with special reference to the residence of the clergy on their respective benefices." The commissioners were required to report their "opinions as to what measures it would be expedient to adopt" on the several points submitted to their consideration.

The commissioners were the archbishops of Canterbury and York, the bishops of London, Lincoln, and Gloucester, the lord chancellor, the first lord of the Treasury (Sir Robert Peel), and several members of the government, with other laymen. A change in the cabinet having occurred a few months afterwards, a new commission was issued on the 6th of June, 1835, for the purpose of substituting the names of members of the new cabinet.

The four Reports presented by the commissioners were respectively dated 17th March, 1835, and 4th March, 20th May, and 24th June, 1836. A fifth Report was prepared, but it had not been signed when the death of king William IV. occurred, and it was presented as a parliamentary paper (Sess. 1838 (66), xxviii. 9).

The First Report related to the duties and revenues of bishops. The commissioners recommended various alterations of the boundaries of dioceses, the union of the sees of Gloucester and Bristol, the union of the sees of Bangor and St. Asaph, and the erection of sees at Ripon and Manchester. They calculated the net income of the bishoprics of England and Wales at 148,875*l.*, but from the unequal manner in which this revenue was distributed, the income of one-half of the bishoprics was below the sum necessary to cover the expenses to which a bishop is unavoidably subject; and to remedy this state of things, and

with a view of doing away with commendams and diminishing the motives for translations, they recommended a different distribution of episcopal revenues.

The Third Report also related to episcopal matters.

The Second and Fourth Reports, and the draft of the Fifth Report, related to the cathedral and collegiate churches and to parochial subjects. They recommended the appropriation of part of the revenues of the cathedral and collegiate churches, and the entire appropriation of the endowments for non-residentiary prebends, dignities, and officers, and that the proceeds in both cases should be carried to the account of a fund out of which better provision should be made for the cure of souls.

The Commissioners stated in their Second Report that they had prepared a bill for regulating pluralities and the residence of the clergy; and in 1838 an act was passed (1 & 2 Vict. c. 106) relating to these matters. The chief provisions of the act are given in BENEFICE, p. 347 and p. 351.

On the 13th of August, 1836, an act was passed (6 & 7 Wm. IV. c. 77) which established the ecclesiastical commissioners as "one body politic and corporate, by the name of the 'Ecclesiastical Commissioners for England.'" The number of commissioners incorporated was thirteen, of whom eight were ex-officio, namely, the archbishops of Canterbury and York, the bishop of London, the lord chancellor, the lord president of the council, the first lord of the Treasury, the chancellor of the exchequer, and such one of the principal secretaries of state as might be nominated under the sign manual. There were five other commissioners, of whom two were bishops; and these five were removable at the pleasure of the crown. The laymen who were appointed were required by the act to subscribe a declaration as to their being members of the United Church of England and Ireland by law established.

By an act passed 11th August, 1840 (3 & 4 Vict. c. 113), the constitution of the Ecclesiastical Commission was considerably modified by increasing the number of ex-officio members, and by other alterations. In addition to the members constituted ex-officio commissioners under the act 6 & 7 Wm. IV. c. 77, the following were by this act also appointed:—all the bishops of England and Wales, the deans of Canterbury, St. Paul's, and Westminster, the two chief justices, the master of the rolls, the chief baron, and the judges of the Prerogative and Admiralty Courts. By this act the crown is empowered to appoint four, and the archbishop of Canterbury two laymen as commissioners in addition to the three appointed under the former act. Under the former act the commissioners were removeable by the crown; but now each commissioner continues a member of the corporation "so long as he shall well demean himself in the execution of his duties." Lay members are required as before to subscribe a declaration that they are members of the Established Church.

Five commissioners are a quorum at meetings of which due notice has been given. The chairman, who has a casting vote, is the commissioner present first in rank; and if the rank of all the commissioners present be equal, the chair is to be taken by the senior commissioner in the order of appointment. Two of the episcopal commissioners must be present at the ratification of any act by the common seal of the corporation; and if they, being the only two episcopal commissioners present, object, the matter is to be referred to an adjourned meeting. The commissioners may summon and examine witnesses on oath, and cause papers and documents to be produced before them.

The act (6 & 7 Wm. IV. c. 77) empowers the ecclesiastical commissioners to prepare and lay before his majesty in council such schemes as shall appear to them to be best adapted for carrying into effect the recommendations contained in the five Reports already mentioned, with such modifications or variations as to matters of detail and regulation as shall not be substantially repugnant to any or either of those recommendations. The king, by an order in council, ratifies these schemes, and appoints a time for their coming into operation. This order must be registered by the diocesan registrar of the diocese within which the place or

district affected by the order is situated, and it must also be published in the London Gazette.' A copy of all the orders issued during the preceding twelve months must be presented annually to Parliament within a week after its meeting. As soon as an order is registered in the diocese, and gazetted, it has the same force as if it had been included in the acts for carrying into effect the Reports of the Commissioners.

By special enactments, and by the joint authority of the Queen in council and the Ecclesiastical Commissioners, changes of great importance have been made in relation to ecclesiastical revenues and duties.

The first act (6 & 7 Wm. IV. c. 77) is entitled 'An Act for carrying into effect the Reports of the Commissioners appointed to consider the state of the Established Church in England and Wales, with reference to Ecclesiastical Duties and Revenues, so far as they relate to Episcopal Dioceses, Revenues, and Patronage.' By this act the dioceses of England and Wales have been re-arranged, four sees have been consolidated into two, two new sees have been created, the patronage of the several bishops has been more equally divided, commendams are abolished, and the revenues of the different sees have been also more equally apportioned. [BISHOP, p. 385.] The jurisdiction of archdeacons was also settled by the Act. [ARCHDEACON, p. 180.]

The second act (3 & 4 Vict. c. 113) was passed 11th August, 1840, and is entitled 'An Act to carry into effect, with certain modifications, the Fourth Report of the Commissioners of Ecclesiastical Duties and Revenues;' but its enactments also comprehend some of the propositions of the Second Report and of the draft Fifth Report. The main subject of the act is the cathedral and collegiate churches, and the application of parts of their revenues to spiritual destitution in parishes. The act made some change in the constitution of deans and chapters, suspended a large number of canonries, founded honorary canonries [CANON, p. 443], abolished non-residentiary deaneries and sinecure rectories in public patronage; deprived non-residentiary prebends and other non-resident offices in cathedral and collegiate churches of the endowments formerly attached to such offices. Self-elected deans and chapters are abolished: deans are to be appointed by the crown, and the canons by the bishops. Sinecure rectories in private patronage may be bought by the Commissioners and suppressed. The profits of these dignities and offices, and sinecure rectories, are vested in the Ecclesiastical Commissioners, and are carried to a common fund, out of which additional provision is to be made for the cure of souls in parishes where such assistance is most required. Thus the act provided that a portion of the proceeds of prebends suppressed in Lichfield Cathedral should be devoted to making provision for the rector of St. Philip's, Birmingham, and for the perpetual curate of Christ Church in the same town; that the endowments belonging to the collegiate churches of Wolverhampton, Heytesbury, and Middleham should be applied to making better provision for the cure of souls in the districts with which those places are connected; and that the endowments of the collegiate church of Wimborne minster should be applied with a like object to the parish of Wimborne minster. The act empowers the Commissioners to annex the whole or any part of the endowments of sinecure rectories abolished by the act or purchased to the vicarages or perpetual curacies dependent on them, when the extent of the population or the incompetent endowment of such vicarages or curacies may render it expedient. Sinecure preferments may be annexed to benefices with cure of souls. Benefices may be divided or consolidated with consent of patrons. Arrangements may be made for a better provision for the spiritual duties of ill-endowed parishes by exchange of advowsons or other alterations in the exercise of patronage. When two benefices belong to the same patron, the income may be differently apportioned with his consent.

A third Act was passed 21st June, 1841 (4 & 5 Vict. c. 39). Its chief object was to amend and explain the two former acts, but it contains various enactments calculated to carry out the principle of

the first two acts as to various regulations and details.

In each of the acts for carrying into effect the recommendations of the Ecclesiastical Commissioners, vested interests are specially protected.

From a return presented to Parliament, it appears that, down to May 1st, 1844, the number of benefices and churches whose incomes had been augmented by the Ecclesiastical Commissioners for England, was 496, and that the annual augmentation amounted to the sum of 25,779*l.*

There is in Ireland a body styled the Ecclesiastical Commissioners, who were appointed under the act 3 & 4 Wm. IV. c. 37 ('Church Temporalities Act'), and are empowered to receive the incomes of bishoprics on their becoming extinct in pursuance of the abovementioned act.

ECCLESIASTICAL COURTS. Courts in which the canon law is administered [CANON LAW], and causes ecclesiastical determined. Coke, in treating of the distinction between temporal and spiritual causes, says:—"And as in temporal causes, the king, by the mouth of his judges in his courts of justice, doth judge and determine the same by the temporal laws of England; so in causes ecclesiastical and spiritual, as, namely, blasphemy, apostacy from Christianity, heresies, schisms, ordering admissions, institutions of clerks, celebration of divine service, rights of matrimony, divorces, general bastardy, subtraction and right of tithes, oblations, obventions, dilapidations, reparation of churches, probate of testaments, adminitration and accounts upon the same, simony, incests, fornications, adulteries, solicitation of chastity, pensions, procurations, appeals in ecclesiastical causes, commutation of penance, and others, (the cognizance whereof belongeth not to the common laws of England,) the same are to be decided and judged by ecclesiastical judges according to the king's ecclesiastical laws of this realm."

In July, 1830, a Commission was appointed to inquire into the Practice and Jurisdiction of the Ecclesiastical Courts in England and Wales. The Report of the Commissioners, which was presented in 1831, was signed by the archbishop of Canterbury, and three of the bishops, the two chief justices, the chief baron, and several other persons of authority and eminence. This report gives the most correct and authentic account which exists of: 1, The nature of the ecclesiastical courts. 2, Of the course of proceeding in ecclesiastical suits; and 3, The nature of the processes, practice and pleadings of the ecclesiastical courts. The report in question has been almost solely used in the present article with such abridgment and slight alterations, as were necessary to bring it within the requisite space which could be devoted to the subject.

The ordinary ecclesiastical courts are—1. The *Provincial Courts*, being, in the province of Canterbury, the Court of Arches, or Supreme Court of Appeal, the Prerogative or Testamentary Court, and the Court of Peculiars; and in the province of York, the Prerogative or Testamentary Court, and the Chancery Court; 2. the *Diocesan Courts*, being the consistorial court of each diocese, exercising general jurisdiction; the court or courts of one or more commissaries appointed by the bishop, in certain dioceses, to exercise general jurisdiction, within prescribed limits; and the court or courts of one or more archdeacons, or their officials, who exercise general or limited jurisdiction, according to the terms of their patents, or to local custom. 3. There are also *Peculiars* of various descriptions in most dioceses, and in some they are very numerous: royal, archiepiscopal, episcopal, decanal, sub-decanal, prebendal, rectorial and vicarial; and there are also some manorial courts, which exercise testamentary jurisdiction.

The Provincial courts of the archbishop of Canterbury, and the archbishop of York, are independent of each other; the process of one province does not run into the other, but is sent by a requisition from the court of one province to the local authority of the other, for execution, when it is necessary. The appeal from each of the provincial courts lies to the Judicial Committee of Privy Council; but before the passing of the statute 2 & 3 Wm. IV. c. 92, the ap-

peal was to the king, and a commission issued under the Great Seal in each individual case of appeal, to certain persons or delegates, to hear and determine the matter in contest. [DELEGATES, COURT OF.]

Of the three Archiepiscopal Courts of Canterbury, the Arches Court is the first. [ARCHES, COURT OF.] This court exercises the appellate jurisdiction from each of the diocesan and most of the peculiar courts within the province. It may also take original cognizance of causes by letters of request, from each of those courts; and it has original jurisdiction, for subtraction of legacy given by wills proved in the Prerogative Court of Canterbury.

The Prerogative Court has jurisdiction of all wills and administrations of personal property left by persons having *bona notabilia*, or effects of a certain value, in divers ecclesiastical jurisdictions within the province. A very large proportion, not less than four fifths of the whole contentious business, and a very much larger part of the uncontested, or as it is termed common-form business, is dispatched by this court. Its authority is necessary to the administration of the effects of all persons dying possessed of personal property to the specified amount within the province, whether leaving a will or dying intestate; and from the very great increase of personal property, arising from the public funds and the extension of the commercial capital of the country, the business of this jurisdiction, both as deciding upon all the contested rights, and as registering all instruments and proofs in respect of the succession to such property, is become of very high public importance.

The Court of Peculiars, which is the third Archiepiscopal Court of Canterbury, takes cognizance of all matters arising in certain deaneries: one of these deaneries is in the diocese of London, another in the diocese of Rochester, another in the diocese of Winchester, each comprising several parishes; and some others, over which the archbishop exercises ordinary jurisdiction, and which are exempt from and independent of the several bishops within whose dioceses they are locally situated.

The province of Canterbury, includes twenty-one dioceses, and therein the diocese of Canterbury itself, where the ordinary episcopal jurisdiction is exercised by a commissary, in the same manner as in other dioceses.

The province of York includes five dioceses, besides that of Sodor and Man, and the archiepiscopal jurisdiction is exercised therein much in the same manner as in the province of Canterbury.

The Diocesan Courts take cognizance of all matters arising locally within their respective limits, with the exception of places subject to peculiar jurisdiction. They may decide all matters of spiritual discipline; they may suspend or deprive clergymen, declare marriages void, pronounce sentence of separation à mensâ et thoro, try the right of succession to personal property, and administer the other branches of ecclesiastical law.

The Archdeacon's Court is generally subordinate, with an appeal to the bishop's court; though in some instances it is independent and co-ordinate.

The archdeacons' courts, and the various peculiars already enumerated, in some instances take cognizance of all ecclesiastical matters arising within their own limits, though the jurisdiction of many of the peculiar courts extends only to a single parish: the authority of some of them is limited to a part only of the matters that are usually the subject of ecclesiastical cognizance; several of the peculiars possess voluntary, but not contentious, jurisdiction.

The total number of courts which exercise any species of ecclesiastical jurisdiction in England and Wales is 372, which may be classed as follows:—

Provincial and diocesan courts	36
Courts of bishops' commissaries	14
Archidiaconal courts	37
PECULIAR JURISDICTIONS.	
Royal	11
Archiepiscopal and episcopal	44
Decanal, subdecanal, &c.	44
Prebendal	88
Rectorial and vicarial	63
Other peculiars	17
Courts of lords of manors	48

In 1843 the gross fees, salaries, and emoluments of the judges, deputy judges,

registrars, deputy-registrars, and all other officers in the ecclesiastical courts of England, Wales, and Ireland, amounted to 120,513*l.*, as follows:—

	£.
England . .	101,171
Wales . . .	4,882
Ireland . .	14,459

The ecclesiastical jurisdiction comprehends causes of a civil and temporal nature; some partaking both of a spiritual and civil character, and, lastly, some purely spiritual.

In the first class are testamentary causes, matrimonial causes for separation and for nullity of marriage, which are purely questions of civil right between individuals in their lay character, and are neither spiritual nor affect the church establishment.

The second class comprises causes of a mixed description, as suits for tithes, church-rates, seats, and faculties. As to tithes, however, the courts of common law can restrain the ecclesiastical courts from trying any cases of modus or prescription, if either of the parties apply for a prohibition.

The third class includes church discipline, and the correction of offences of a spiritual kind. They are proceeded upon in the way of criminal suits, pro salute animæ, that is, for the safety of the offender's soul, and for the lawful correction of manners. Among these are offences committed by the clergy themselves, such as neglect of duty, immoral conduct, advancing doctrines not conformable to the articles of the church, suffering dilapidations, and the like offences; also by laymen, such as brawling, laying violent hands on any person, and other irreverent conduct in the church or churchyards, violating churchyards, neglecting to repair ecclesiastical buildings, incest, incontinence, defamation; all these are termed "Causes of Correction," except defamation, which is of an anomalous character. These offences are punished by monition, penance, excommunication, formerly, and now in place of it imprisonment for a term not exceeding six months [EXCOMMUNICATION], suspension ab ingressu ecclesiæ, suspension from office and deprivation.

The canon law has been practised in the Ecclesiastical courts as a distinct profession for upwards of three centuries. The rules for the admission of advocates are given in BARRISTER, p. 317. The residence of the judges and advocates, and the proper buildings for holding the Ecclesiastical and Admiralty Courts, are at Doctors' Commons, the site of which was purchased by some members of this body in 1567. [DOCTORS' COMMONS.] The members of the society were incorporated in 1768 by a royal charter, under the name of "The College of Doctors of Laws exercent in the Ecclesiastical and Admiralty Courts." The proctors discharge duties similar to those of solicitors and attorneys in other courts. [PROCTOR.]

The course of proceeding in these courts is as follows:—The mode of commencing the suit, and bringing the parties before the court, is by a process called a Citation, or summons. This citation, in ordinary cases, is obtained as a matter of course, from the registry of the court, and under its seal; but in special cases, the facts are alleged in what is termed an act of court, and upon those facts the judge or his surrogate decrees the party to be cited; to which, in certain cases, is added an intimation, that if the party does not appear, or appearing does not show cause to the contrary, the prayer of the plaintiff, set forth in the decree, will be granted. The party cited may either appear in person, or by his proctor, who is appointed by an instrument, under hand and seal, termed a proxy. The proctor thus appointed represents the party, acts for him and manages the cause, and binds him by his acts.

In Testamentary causes, the proceeding is sometimes commenced by a Caveat, which may be entered by a party interested in the effects of the deceased person, against the grant of probate of will or letters of administration, without notice being first given to him who enters the caveat. This caveat is then *warned* by the party who claims the representation either as executor or administrator, which is in effect a notice to the proctor who enters the caveat, that he must appear and take further steps, if he intends to continue his opposition. Both parties are then

assigned by order of court to set forth their respective claims, and the suit thus commences, either to try the validity of an alleged will, or the right to administration, either under an intestacy or with a will annexed. [ADMINISTRATION; EXECUTOR.]

There is another process in testamentary matters, extremely useful and frequently resorted to. The executor, or other person who claims the grant of probate of a will or other testamentary instrument, may cite the next of kin and other parties interested in case there should be an intestacy or under a former will, to appear and see the will propounded and proved by witnesses; and if the parties cited do not appear and oppose the probate, they are barred from afterwards contesting its validity, unless on account of absence out of the kingdom, or some other satisfactory cause.

So again, the next of kin, or other parties entitled either to the grant of letters of administration or under a former will, may cite the executor or other person apparently benefited under a suggested will or testamentary instrument, to appear and propound it; or otherwise show cause why probate should not be granted of the suggested will of the deceased, on the ground of his having died intestate, or why probate should not be granted of a former will; and the parties cited, not appearing, are barred from afterwards setting up the will. But if probate or administration be taken in common form, without citing persons who have an adverse interest, the grant may afterwards be called in, and the executor or administrator cited, and put upon proof of his right, as if no such common form grant had issued. Again, where no grant is applied for by the person primarily entitled to it, such as an executor, residuary legatee, or next of kin, process may be taken out by any person who claims an interest in the effects of the deceased, such as a legatee, a party entitled to a distributive share of the estate, or a creditor, but he must call upon the persons primarily entitled to accept or refuse the grant, or otherwise show cause why it should not pass to such person who claims an interest. Or if a person be dead intestate, without leaving any known relations, a creditor may obtain letters of administration, upon advertising for next of kin in the Gazette and a morning and evening newspaper, provided he serves a process on the Royal Exchange and on the king's proctor, but the Crown has a right to take the grant, if it makes the claim.

In all these and similar cases, the facts must be supported by affidavit, all due notice is required to be given, and the grant is moved for before the court, at its sitting.

The mode of enforcing all process, in case of disobedience, is by pronouncing the party cited to be contumacious; and if the disobedience continues, a significavit issues, upon which an attachment from Chancery is obtained, to imprison the party till he obeys. In cases where some act is required to be done by the party cited, to exhibit an inventory and account, for instance, or to pay alimony, the compulsory process is enforced; but in some cases, where no act is necessary to be done by the party cited, the plaintiff may proceed in pœnam contumaciæ, and the cause then goes on ex parte, as if the defendant had appeared. The party cited, to save his contumacy, may appear under protest, and may show cause against being cited; such as, that the court has no jurisdiction in the subject-matter, or that he is not amenable to that jurisdiction: this preliminary objection is heard upon petition and affidavits; and either the protest is allowed, and the defendant dismissed, or the protest is overruled, and the defendant is assigned to appear absolutely; and costs are generally given against the unsuccessful party. Either party may appeal from the decision on this preliminary point; or the defendant, in case the judge decides against him on the question of jurisdiction, and on some other questions, may apply to a court of law for a prohibition.

Some other points, such as the claim to administration among persons of admitted equal degree of kindred, objections to an inventory and account, and other similar matters, may be heard upon petition and affidavit, where the facts are not of such a nature as to require investigation in the

more formal proceeding of regular pleadings and depositions, with the benefit of cross-examining witnesses.

The form of the pleadings is next to be described. These are intended to contain a statement of the facts relied upon and proposed to be proved by each party in the suit, the real grounds of the action, and of the defence.

Causes, in their quality, are technically classed and described as plenary and summary, though in modern practice there is substantially little difference in the mode of proceeding. All causes in the Prerogative Court are summary.

The first plea bears different names in the different descriptions of causes. In criminal proceedings, the first plea is termed the Articles; in form, it runs in the name of the judge, who articles and objects the facts charged against the defendant; in plenary causes, not criminal, the first plea is termed the Libel, and runs in the name of the party or his proctor, who alleges and propounds the facts founding the demand; in testamentary causes, the first plea is termed an Allegation. Every subsequent plea, in all causes, whether responsive or rejoining, and by whatever party given, is termed an Allegation.

Each of these pleas contains a statement of the facts upon which the party founds his demand for relief, or his defence; they resemble the bill and answer in equity, except that the allegation is broken into separate positions or articles: the facts are alleged under separate heads, according to the subject-matter, or the order of time in which they have occurred. Under this form of pleading the witnesses are produced and examined only to particular articles of the allegation, which contain the facts within their knowledge; a notice or designation of the witnesses is delivered to the adverse party, who is thereby distinctly apprised of the points to which he should address his cross-examination of each witness, as well as the matters which it may be necessary for him to contradict or explain by counter-pleading.

Before a plea of any kind, whether articles, libel, or allegation, is admitted, it is open to the adverse party to object to its admission, either in the whole or in part: in the whole, when the facts altogether, if taken to be true, will not entitle the party giving the plea to the demand which he makes, or to support the defence which he sets up; in part, if any of the facts pleaded are irrelevant to the matter in issue, or could not be proved by admissible evidence, or are incapable of proof. These objections are made and argued before the judge, and decided upon by him, and his decision may be appealed from. For the purpose of the argument, all the facts capable of proof are assumed to be true: they are, however, so assumed merely for the argument, but are not so admitted in the cause; for the party who offers the plea is no less bound afterwards to prove the facts, and the party who objects to the plea is no less at liberty afterwards to contradict the facts. If the plea is admitted, the further opposition may be withdrawn: if the plea is rejected, the party who offers it either abandons the suit, or appeals against the rejection, in order to take the judgment of a superior tribunal. When a plea has been admitted, a time, or term probatory, is assigned to the party who gives the plea, to examine his witnesses; and the adverse party is assigned, except in criminal matters, to give in his answers upon oath, to his knowledge or belief of the facts alleged. The defendant may proceed then, if he thinks proper, or he may wait until the plaintiff has examined his witnesses, to give an allegation controverting his adversary's plea. This responsive allegation is proceeded upon in the same manner; objections to its admissibility may be taken, answers upon oath be required, and witnesses examined. The plaintiff may, in like manner, reply by a further allegation; and on that, or any subsequent allegation, the same course is pursued.

In taking evidence the witnesses are either brought to London to be examined, or they are examined by commission near their places of residence. Their attendance is required by a Compulsory, somewhat in the nature of a subpœna, obedience to which is enforced in the same way as in other cases of contumacy. The examination is by depositions taken in

writing and in private by examiners of the court, employed for that purpose by the registrars. The examination does not take place upon written interrogatories previously prepared and known; but the allegation is delivered to the examiner, who, after making himself master of all the facts pleaded, examines the witnesses by questions which he frames at the time, so as to obtain, upon each article of the allegation separately, the truth and the whole truth, as far as he possibly can, respecting such of the circumstances alleged as are within the knowledge of each witness. The cross-examination is conducted by interrogatories addressed to the adverse witnesses, and when the deposition is complete, the witness is examined upon the interrogatories delivered to the examiner by the adverse proctor, but not disclosed to the witness till after the examination in chief is concluded and signed, nor to the party producing him till publication passes; and each witness is enjoined not to disclose the interrogatories, nor any part of his evidence, till after publication. In order that the party addressing the interrogatories may be the better prepared, the proctor producing the witness delivers, as before stated, a designation, or notice of the articles of the plea on which it is intended to examine each witness produced.

The examination and cross-examination of witnesses is kept secret until publication passes, that is, until copies of the depositions may be had by the adverse parties, after which either party is allowed to except to the credit of any witness, upon matter contained in his deposition. The exception must be confined to such matter, and not made to general character, for that must be pleaded before publication; nor can the exception refer to matter before pleaded, for that should be contradicted also before publication. The exception must also tend to show that the witness has deposed falsely and corruptly. The exceptive allegations are proceeded upon, when admitted, in the same manner as other pleas. They are not frequently offered, and are always received with great caution and strictness, as they tend more commonly to protract the suit and to increase expense than to afford substantial information in the cause. It is always, however, in the power of the court to allow further pleading in a cause; and if new circumstances of importance are unexpectedly brought out by the interrogatories, the court will, in the exercise of its discretion, allow a further plea after publication. This may also be permitted in cases where facts have either occurred or come to the knowledge of the party, subsequently to publication having passed.

The evidence on both sides being published, the cause is set down for hearing. All the papers, the pleas, exhibits (or written papers proved in the cause), interrogatories, and depositions are delivered to the judge for perusal before hearing the case fully discussed by counsel. All causes are heard publicly in open court; and on the day appointed for the hearing, the cause is opened by the counsel on both sides, who state the points of law and fact which they mean to maintain in argument: the evidence is then read, unless the judge signifies that he has already read it, and even then particular parts are read again, if necessary, and the whole case is argued and discussed by the counsel. The judgment of the court is then pronounced upon the law and facts of the case; and in doing this the judge publicly, in open court, assigns the reasons for his decisions, stating the principles and authorities on which he decides the matters of law, and reciting or adverting to the various parts of the evidence from which he deduces his conclusions of fact, and thus the matter in controversy between the parties becomes adjudged.

The execution of the sentence, in case there be no appeal interposed, is either completed by the court itself, according to the nature of the case—such as by granting probate or letters of administration, or signing a sentence of separation—or remains to be completed by the act of the party, as by exhibiting an inventory and account, by payment of the tithes sued for, and other similar matters, in which cases execution is enforced by the compulsory process of contumacy, significavit, and attachment. The question of costs in these courts is, for the most part, a matter in the discretion of the judge, ac-

cording to the nature and justice of the case; and the reasons for granting or refusing costs are publicly expressed at the time of giving the judgment.

Attempts were made more than three centuries ago, to remedy the defects of the ecclesiastical courts. The earliest efforts of this kind were directed to the peculiar jurisdictions. Some of these jurisdictions extend over large tracts of country, and embrace many towns and parishes; others comprehend several places lying at a great distance apart from each other; and some only include one or two parishes. The jurisdiction to be exercised in these courts is not defined by any general law, and it is often difficult to ascertain to what description of cases the jurisdiction of any particular court extends. The commissioners appointed to revise the ecclesiastical laws, in the reigns of Henry VIII. and Edward VI., recommended that the power of the bishop, in matters of discipline, should extend to all places in the diocese, notwithstanding the exemptions and privileges of Peculiars. In the reign of Queen Elizabeth, it was proposed or talked of in convocation that parliament should be applied to, to subject peculiar and exempt rites and jurisdictions of what had belonged to monasteries to the diocesan. Nothing, however, appears to have been done.

In 1812, Sir W. Scott (Lord Stowell) brought a bill into parliament which passed the House of Commons, but was afterwards dropped in the Lords, which provided that "the power of hearing and determining contested causes of ecclesiastical cognizance should be exercised only by ecclesiastical courts sitting under the immediate commission and authority of the archbishops and bishops, and not by inferior or other ecclesiastical courts."

In 1832, the commissioners appointed to inquire into the practice and jurisdiction of the ecclesiastical courts, recommended a number of important changes in these courts. In 1833 the real property commissioners expressed an opinion in favour of their extensive reform. In the same year a select committee of the House of Commons made a report in which similar views were urged, and in 1836 a select committee of the House of Lords adopted the same course. From 1836 until the present time several bills have been brought in for amending the ecclesiastical courts, none of which were carried. In 1836 Lord Cottenham brought in an ecclesiastical courts bill. On opening the session of parliament in 1842 a measure for the improvement of the ecclesiastical courts was announced in the speech from the throne; but the bill brought in by the government, lingered through the session and was finally abandoned. In 1843 and 1844, other bills with the same object were equally unsuccessful. In the session of 1845 Lord Cottenham has again brought in an ecclesiastical courts bill, and as it has received the concurrence of the Lord Chancellor, it is possible that it may pass. At present (June 19th) it is in the hands of a select committee. Lord Cottenham's bill is identical with that which he brought in in 1836. It proposes the establishment of a central court in London to which all wills are to be sent. Surrogates are to act in the towns where there are now diocesan courts, who are to grant probates where the amount of property is small, but in every case the will is to be sent to London to be registered. The central court is to retain the power of the old courts in questions of divorce. In matters relating to church-rates there is to be an appeal to quarter sessions, where the rate has been illegally levied; and in that of tithes the power of the ecclesiastical courts is to be abolished altogether. The criminal jurisdiction of these courts, and the power of punishing for defamation, incest, and brawling in churches is also to be abolished.

By a clause in 6 & 7 Will. IV. c. 77, which was an act for carrying into effect the Reports of the Ecclesiastical Commissioners of 1835, it was enacted that future appointments in any of the ecclesiastical courts in England and Wales (except the Prerogative Court of Canterbury) were not to give a vested interest in any office, nor any claim or title to compensation in case of the abolition of offices.

E'CHEVIN, the name given under the old French monarchy to the municipa

magistrates of various cities and towns. At Paris there were four échevins and a prévôt des marchands, whose jurisdiction extended over the town and adjacent territory; in the other towns there was a maire and two or more échevins. In the south of France the same officers were called by other names, such as consuls in Languedoc and Dauphiné, capitouls at Toulouse, jurats at Bordeaux. The last name, that of jurats, was used in some of the English municipalities. They tried minor suits, laid the local duties or octroi upon imports, had the inspection of the commercial revenues and expenditure, as well as the superintendence of the streets, roads, and markets, the repairs of public buildings, &c. The name échevins seems to have been derived from scabini, a Latin word of the middle ages, which was used in Italy under the Longobards, and in France, Flanders, and other countries under the Carlovingian dynasty. In Holland they are called schepens. The scabini were the assessors to the counts, or missi dominici, appointed by the monarch to administer a province or district; and they were chosen among the local inhabitants. Afterwards, when charters were given to the communes, the municipal magistrates elected by the burgesses assumed also the name of scabini or échevins. (Ducange, *Glossarium*.)

ECONOMISTES. [POLITICAL ECONOMY.]

EDICTA, EDICTS. [EQUITY.]

EDUCATION. In every nation, even those called uncivilized, there are, and necessarily must be, certain practices and usages according to which children are instructed in those things which are to form the occupation of their future life; and every civilized nation, and, we may presume, nations also called uncivilized, have some general term by which they express this process of instruction. In the European languages derived from the Latin, and in others that have a mixture of that language, this general term is Education. It is not important to consider the more or less precise notions attached to this or any other equivalent word, but it is enough to observe, that, as the language of every nation possesses such a term, it is a universal truth that all nations admit that there is something which is expressed by the comprehensive term education, or by some equivalent term. But like all other general terms which have been long in use, this term Education comprehends within the general meaning already assigned to it a great number of particulars, which are conceived by various people in such different modes and degrees and in such varying amount as to the number of the particulars, some nations or individuals conceiving a certain set of particulars as essential to the term, others conceiving a different set of particulars as essentials, and others again conceiving the same particulars in such different ways, that two or more persons who agree in their general description of the term might very probably, in descending into the enumeration of the particulars, find themselves completely at variance with one another. This remark possesses no claim to novelty, but it is not on that account the less important. The discrepancy just stated is apparent not only as to such general terms as Education, Government, Right, Duty, and numerous other such words; but it is perceived and occurs even in things obvious to the senses, which consist of a number of parts, such as a machine, or any other compound thing. The general use of a machine, as a mill, for instance, is conceived in the same way by all, by the miller and by persons who knew nothing more about the mill than that it is used for grinding corn. As to the particulars, there may be all imaginable discrepancies among the persons who are only acquainted with the general purpose of the mill. But discrepancies as to the mode in which the several parts of a thing and the uses of the several parts are conceived, are generally discrepancies to be referred to the inaccuracy of the conceptions; they are, in fact, only errors, not the same but about the same thing. The more completely a large number of persons approach to harmony in their whole views as to this machine, the nearer, as a general rule, do their several views approach to accuracy; it being of the nature of truth to produce a harmony of opinion, the truth being one and invariable; and it being of the nature of error

to admit of more varieties than man has yet conceived, inasmuch as men yet unborn will conceive errors never conceived before.

The same holds good as to Education which holds good of the machine. The general use, the general object of Education is roughly and rightly conceived by all persons to whom the name is familiar; but the great contrariety which exists among mankind as to the particulars which they conceive as entering into and forming a part of this term, and as to their mode of conceiving the same, proves either that all are still wrong as to their particular conceptions of this term, or that hitherto no means have been discovered of producing a general harmony of opinion, or in other words, of approaching to the truth. And here there is no person, or class of persons, who, as in the case of the miller, is or are allowed to be an authority competent to decide between conflicting opinions.

In every society, Education (in what particular manner conceived by any particular society is of no importance to our present inquiry) is, as a general rule, and must necessarily be, subjected to the positive law of the society, and to that assemblage of opinions, customs and habits which is not inappropriately called by some writers the Positive Morality of Society, or the Law of Opinion. This truth, or truism, as some may call it, is the basis of every inquiry into Education. In no country can there exist, as a general rule, an Education, whether it be good or bad, not subordinate to the law as above explained: for if such Education did exist, the form of that society or political system could not co-exist with it. One or the other must be changed, so that on the whole there must at last result a harmony, and not a discord. In every country then there does exist Education, either directed by and subordinate to the Positive Law and Positive Morality of that country, or there is an Education not so directed and subordinate, and consequently inconsistent with the continuance of that political system in which it exists. But such an anomaly, if found anywhere, should not be allowed to exist, because it is inconsistent with the continued existence of the society in which it has established itself; and if such an Education does exist, and can maintain itself in a society, against the will of that society, such a society is not a sovereign and independent society, but is in a state of anarchy. Education then should be in harmony with and subordinate to the political system: it should be part of it; and whether the political system is called by the name good or bad, if that political system is to continue, Education must not be opposed to it, but must be a part of it. From this it follows that the question, What is the best education? involves the question, What is the best political system? and that question again cannot be answered without considering what are the circumstances of the particular nation or society as to which we inquire what is the best political system. Recollecting however that the question of the best education and of the best political system cannot be discussed apart, because, as we have shown, Education is a part of the system, still we can consider several important questions as to Education, without determining what is the best political system.

One is, the political system being given, what ought the Education to be?

And, how far is it the business of the state to direct, control, and encourage that Education?

A man (under which term we include woman) has two distinct relations or classes of relations towards the state: one comprehends his duties as a citizen, wherein he is or ought to be wholly subordinate to the state; the other comprehends all his functions as a producer and enjoyer of wealth, wherein he has or ought to have all freedom that is not inconsistent with the proper discharge of his duties as a citizen. It is barely necessary to state this proposition in order to perceive that his Education as a citizen should be directed by the state. To suppose any other directing power, any power for instance which may educate him in principles opposed to the polity of which he is to form a part, is to suppose an inconsistency which, in discussing any question involving principles, we always intend to avoid.

His Education then as a citizen, it must be admitted, ought to be under the superintendence of the state: but How ought the state to exercise this superintendence?

It is not our purpose to attempt to answer this question, which involves the consideration of some of the most difficult questions in legislation. It is our object here to present the questions which it belongs to the civilization of the present and future ages to solve; to show What is to be done, not How it is to be done.

But we may answer the question so far as this: the state having the superintendence of the citizen's Education, must have the superintendence of those who direct that Education; in other words, must direct those who are to carry its purposes into effect. The body of teachers therefore must be formed by, or, at least, must be under the superintendence of the state. Unless this fundamental truth is admitted and acted on, the state cannot effectually direct or superintend the Education of its citizens.

Every branch of this inquiry into Education runs out into other branches almost innumerable, till we find that the solution of this important question involves the solution of the greater part of those questions which occupy or ought to occupy a legislative body. For this reason, as above stated, we cannot attempt to answer in its full extent, How the state must direct the Education of its citizens, because this question involves the consideration of How far the direction and control of the state should be a matter of positive law imperative on all, how far and with respect to what particular matters it should encourage and give facilities only, how far it should act by penalties or punishment, how far it should allow individuals or associations of individuals to teach or direct teaching according to their own will and judgment, or, to express the last question in other words, whether and to what extent the state should allow competition in Education?

To these questions, and more especially to the last, the answer is in general terms, that the general interest, considered in all its bearings, must determine what and how much the state must do. This answer may be said to determine nothing. It is true it determines no particular thing, but it determines the principle by which all particular measures must be tested; and it would not be difficult to select instances from our own legislation, where enactments relating to places of education have been made with a view to particular interests only, without a reference to all the bearings of the question, and which, consequently, if tried by the test above given, would be found to be mischievous. As to the last question, the answer more particularly is,—that individual competition must not be destroyed. It is possible to reconcile the two principles of state direction and control and individual competition. The state may allow no person to teach without being examined and registered: such register will show if he has been trained under the superintendence of the state or not. This fact being established, it may be left to individuals or associations of individuals to employ what teachers they please. In all the schools founded by the state, in all schools under the superintendence of the state (to which latter class belong nearly all charitable foundations; and all such foundations which are not under the superintendence of the state ought, consistently with the general principles already laid down, to be brought under that superintendence), it follows as a matter of course that none but teachers trained under the superintendence of the state should be appointed. The selection of the teachers, out of the whole authorized body, for any particular school of the class just described, may be safely left to the local authorities who have the immediate superintendence of these schools.

If the principle that a state ought to exercise a superintendence over the Education of its citizens as citizens be admitted, it may be asked, how far and to what branches of knowledge does this extend? To this we reply that a precise answer can only be given by the legislature of each country, and the question cannot be answered without many years of labour and perhaps without many experiments. But it follows from the principles

already laid down that no citizen ought to exercise any function of government, or be intrusted with the exercise of any power delegated by the state, without having received some (what, we cannot here say) Education under the superintendence and direction of the state.

When the sovereign is one, it is clear how he will and ought to direct the Education of his people. His first object must be to maintain his own power. It is an absurdity to suppose any Education permitted in any state which shall be inconsistent with the existence of that state; and consequently in a monarchy, the first object is and must be the preservation of the monarchy. It is unnecessary to show that the attainment of this object is by no means inconsistent with good Education, and Education which is good when considered with reference to other objects than the conservation of the monarchy.

In a democracy [DEMOCRACY] the business of the state is also plain and easy. It is not plain how far and to what classes of subjects the superintendence of the state should extend, for that may be as difficult to determine in a democracy as in any other form of government; but it is plain to what objects the superintendence of the state in such a community should extend. Its objects should be to maintain in all its purity the principle of individual political equality, that the sovereign power is in all and every person, that the will of the majority declared in the form prescribed by the constitution, is the rule which all must obey, and that the expression of opinion on all subjects, by speaking or writing, should be perfectly free. If any checks are wanting on the last head, they will always be supplied in a democracy by the positive morality of the society in a degree at least great as is required, and certainly in a greater degree than in any other form of government; and when opinion is ineffectual, law must supply its weakness.

What must the state do in a political system which is neither a monarchy nor a democracy; in a system where there are contending elements, and none has yet obtained the superiority? The answer is, it must do what it can, and that which it does, being the will of the stronger part for the time, must be considered right. But such a political system, though it may continue for a long time, is always moving (at least it is only safe when it is moving) in the direction impressed upon it by one or other of the contending powers which exist in the state. Still, so long as the struggle continues, there can be no Education in the sense which we are considering, no Education which has the single, clear, and undivided object proposed to it in a monarchy and in a democracy. Such a political system then would appear to be wanting in one of the chief elements of a political system, which we have explained to be the bringing up of the citizens in such a manner as to secure the stability of that system under which they live. In such a system as we here imagine, there being no unity in the object, there can be no unity of means with reference to any object; and such a system might be more properly called an aggregation of political societies, than one political society; what is implied by the word aggregation being the existence of something just strong enough to keep the whole together. Such a society, in spite of its incongruity, may be kept together by several things: one may be, that the positive morality of the whole society is favourable to order, as characterized by a love of wealth, and impressed with a profound conviction of the necessity of leaving free to every individual the pursuit of wealth and the enjoyment of it when it is acquired. Another may be, that in this same society, though there are contending elements, there may be a slow and steady progress, and a gradual change, tending in one direction only; such a gradual progress in such a system may be regarded as the only security against its destruction.

If the history of the world has ever presented, or if it now presents, such a phenomenon as we have attempted to describe; further, if such a society contains the greatest known number of instances of enormous individual wealth opposed to the greatest amount of abject poverty; the highest intellectual cultivation and the greatest freedom of thought, side by

side with the grossest ignorance and the darkest superstition; thousands in the enjoyment of wealth for which they never laboured, and tens of thousands, depending for their daily bread upon the labour of their hands and the sensitive vibrations of the scale of commerce; political power in appearance widely diffused, in effect confined to the hands of a few; ignorance of the simplest elements of society in many of the rich and those who have power; ignorance not greater in those who are poor and have none—such a society, if it exists, is a society in which every reflecting man must at moments have misgivings as to its future condition and as to the happiness of those in whom he is most nearly interested. But if such a society contains a class, properly and truly denominated a middle class, a class neither enervated by excessive wealth and indolence nor depressed by poverty; a class that is characterized by industry and activity unexampled; a class that considers labour as the true source of happiness, and free inquiry on all subjects as the best privilege of a free man—such a society may exist and continue to be indefinitely in a state of progressive improvement. Such a society, with its monstrous anomalies and defects, offers to a statesman of enlarged mind and vigorous understanding the strongest motive, while it supplies him with all the means, to give to the political system an impulse that shall carry it beyond the region of unstable equilibrium and place it at once in a state of security.

In such a society the simple enunciation by one possessed of power, that Education is a part of the business of the state, would be considered as the forerunner of some measure which should lay the foundation of that unity without which the temporary prosperity of the nation can never become permanent and its real happiness can never be secured.

The particular questions that the philosophic legislator has then to solve with respect to the education of the citizens, are—1. How are teachers to be taught, and what are they to be taught? 2. How is the body of teachers to be directed, superintended, rewarded, and punished? 3. What schools and what kinds of schools are to be established and encouraged for the Education of the people? 4. What are the teachers to teach in those schools? 5. Where is the immediate government of such schools to be placed? 6. And where the ultimate and supreme direction and control of such schools? The word Schools is here used as comprehending all places of Education.

It remains to consider those other relations of a man to the state in which we view him as a producer of wealth for his own enjoyment. Here the general principle is, that the pursuit and enjoyment of wealth must be left as free as the public interest requires; and this amount of freedom will not depend in any great degree on the form of government. To this head, that of the production of wealth, belong all the divisions of labour by which a man, to use a homely but expressive phrase, gets his living, or what in other words are called the professions, trades, and arts of a country. The only way in which the state can with any advantage direct or control the exercise of any profession, trade, or art, is by requiring the person who undertakes to exercise it to have been trained or educated for the purpose. Whether this should be done in all cases, or in some and what cases, and to what extent, and how, are questions for a legislature guided by a philosopher to answer.

In all countries called civilized this has been done to a certain extent. The legislation of our own country offers instances of great errors committed by legislating where no legislation was wanted, or by legislating badly. Perhaps instances may also be noted in all countries where evil has arisen for want of legislation on the subject. We may explain by example.

Perhaps it is unnecessary for a state to require that a shoemaker, or a tailor, or a painter, or a sculptor, should be required to go through a certain course of training before he exercises his art. The best shoemaker and best tailor will be sure to find employment, and individual shoemakers and tailors have as ample means of giving instruction in their craft as can be desired. It may be true or not true, that the best painters and sculptors will meet with most employment: but is

it unnecessary or is it necessary for a state to offer facilities and encouragement to those who design to educate themselves as painters and sculptors? Most civilized nations have decided this question by doing so, and there are many reasons in favour of such a policy.

Ought the state to require the professor of law, of medicine, or of religious teaching, to undergo some kind of preliminary Education, and to obtain a certificate thereof? Nearly all civilized countries have required the lawyer and physician to go through some course of Education. There are strong reasons in some countries, our own for instance, both for and against such a requisition; but on the whole, the reasons seem to preponderate in favour of requiring such Education from him who designs to practise law, and still more from him who designs to practise the art of healing. Most civilized countries, perhaps all, except two (so far as we know), require all persons who profess the teaching of Religion to have received some Education, to be ascertained by some evidence. But in both the nations excepted, any person, however ignorant, may preach on subjects which the mass of the community believe or affect to believe to be of greater importance both for their present and future welfare than any other subjects. Professing to maintain, as we hope they always will do, the principle of religious freedom, these two nations have fallen into the greatest inconsistencies. They have checked the free expression of individual opinion by word of mouth, and fettered it in the written form, in the one country by the severe penalties of positive law, and the no less severe penalties of positive morality; and in the other by the penalties of positive morality carried to an excess which is destructive to the interests of the society itself. (See Attorney General *v.* Pearson, 3 Merrivale, 353.) But both nations allow any person, if he professes to be a teacher of religion, however ignorant he may be, to become the weekly, the daily instructor of thousands, including children, who derive and have derived no instruction of any kind except from this source. Such a teaching or preaching, if it only assumes the name and form of religious teaching, is permitted to inculcate principles which may be subversive of the political system; and it may and often does inculcate principles the tendency of which is to undermine the foundations of all social order; for it should never be forgotten that all religious teaching must include moral teaching, though moral teaching is quite distinct from religious teaching. And though it must be admitted that no teacher of religion recommends a bad thing *as* bad, he may recommend a bad thing as good, solely because he knows no better. We have endeavoured to point out an anomaly which exists in certain political institutions, and which can only be allowed to exist so long as it protects itself under a specious and an honoured but misunderstood name. For though it be admitted that such anomaly exist, it may be said that it cannot be remedied without interfering with the important principle of religious freedom. But what is religious or any other freedom? Is it the individual power of doing or saying what a man likes? Certainly not. It means no more than a freedom not inconsistent with the public welfare. Still it may be urged that this is precisely the kind of freedom with which no state, where the principle of religious freedom is admitted, can safely interfere. But this is only bringing us round again to the question, What is religious freedom? To say that it cannot be interfered with is to assume an answer to the question. Does what is called religious freedom, as the same is now understood, admitting it to produce much good, produce also any evil? If it does, can the evil be remedied? Is the free practice of any art or profession, medicine or law, for instance, or the art of instructing children in general knowledge, or perfect freedom in teaching and expounding religious doctrines, inconsistent with the condition of qualification? How the qualification is to be ascertained, and what it is to be, is the question; and it is a question which may be answered.

It may be asked: If a man should not be a teacher of Religion without complying with some previous conditions, why should he be allowed to write on Religion

without some like qualification, for he may do mischief by his writing as well as his oral preaching? This is true; and if it were possible, consistently with religious freedom, as here understood, to prevent persons from writing on Religion who have not had a competent Education, it would be a good thing to prevent them. So would it also be a good thing to prevent persons from writing on many other subjects, who know little or nothing about them, if it could be done consistently with letting those write who do understand what they are writing about. But it cannot be done; and as the free expression of opinion is essential to the full development of a nation's powers, both physical and intellectual, we must be content to take the bad with the good. Writing, however, is different from teaching and preaching. Oral instruction reaches thousands whom a book, however small or cheap, never can reach. If a man should propound doctrines destructive to all social organization in a learned and extensive work, it might be most prudent to take no notice of him. If he should propound them in a form adapted for universal circulation, the case is different; and if his doctrines are such as tend to overthrow the political system under which he lives, it would be a gross inconsistency to allow them to be circulated. Still more, if he should go about preaching them, would it be the business of the state to quench such a firebrand by any means, however severe, that are required for the purpose.

In a Monarchy, such an evil is stopped by the monarch or his agents; but there is the danger that the interference may extend to cases when no real harm could be done by the circulation of the book or the preaching of the doctrine, and to cases in which good would follow. In a free state, no man is convicted of the offence of writing or teaching what is bad without the judgment of his fellow-citizens—in England by a jury; and though a jury is neither always wise nor always impartial, no better means have yet been discovered of reconciling the free expression of opinion with the restraint of opinions which cannot be broached without danger to the state.

The relation of Religion to the State is a question of vital importance to all nations, but to none is it of so great importance as to those of a Republican form, those in which political power is distributed among many individuals, and extends to a large part of the people in general, as distinguished from a privileged class.

He who views a state rightly views it as a Unity: the sovereign power, whether it is lodged in one or in many, is that which gives a unity to all the members of the social body. In the middle-age history of Europe, we see two contending bodies in a state, a body Political and a body Ecclesiastical, and the consequence was anarchy. The states of Europe have long been Christian States, and the Christian Religion is inseparably blended with all European systems, and those of America, which have arisen out of them. In one state in Europe, the Papal State, the constitution is Ecclesiastical, and the Political is merged in it. In some other states of Europe the Ecclesiastical body is now completely subjected by the Political; in others the Ecclesiastical body still possesses large political power. The paramount importance of Religion leads many persons to conclude that the Ecclesiastical Estate should have political power, or at least that it should have the sole power of regulating all its own concerns. Those who maintain this proposition must admit that a state is not a Unity: it is a divided body, one member of which is to some extent independent of the whole body; a monstrous anomaly which can only breed confusion and stop all social improvement.

If the state is to be One, must it be One as a Political body, or as a body Political and Religious? If there is only one religion in the state, and no other allowed, the state may be Politically and Religiously one. Such a state may be perfect in theory, but, in fact, its movements will not be towards improvement, but retrograde. Experience has shown that the free exercise of the understanding on all matters of speculation, on all matters of belief, on all matters that extend beyond the limits of sense, is as

necessary to the development of the understanding, as freedom from unwise restrictions on trade and industry is necessary to the increase of national wealth. If a state then allows each man to think, speak, and so write as he pleases, subject only to the condition that he shall not speak, write, or act, as to attempt to overthrow the power which gives him this freedom, the state must consistently declare, the sovereign body by its acts of legislation must declare, that it is neither a Religious nor an Anti-religious body. The state is neither Christian nor not-Christian. But it is objected—it has been admitted that all European nations are now Christian, and that Christianity is intimately blended with them. True; and for this reason,—the state need not occupy itself about the matter. It is admitted that Christianity has rooted itself in all our social systems deeper than any legislation can do. It pervades all society, its influence is above law. Christianity is therefore recognised by all; for as to the few speculative thinkers who do not recognise its truths, and as to the still larger number who are indifferent, they do not affect the great mass. It is a truth indisputable, a truth which no man in his senses can deny, that modern civilization is Christian; and that if all state establishments of religion were abolished, Christianity would exist in the minds of the great mass of a nation, and would be taught and propagated by zealous teachers. Nay, were a state to oppose itself to all religion, to persecute those who profess and those who teach it, Christianity would only flourish the more. For a state is directed by a comparatively small number, and this small number, if it opposed Christianity, would be precisely in the same position as if one man should attempt to control by force a million.

If then Christianity pervades the mass of a nation, the political system, the Government, cannot oppose Christianity, and it need not be identified with it. Christianity, though one thing as contrasted with Mohammedanism or other religions, is not one in itself. There are numerous sects: all profess Christianity, but all differ among themselves in some matters of faith and ceremony. If all are allowed to differ, and all are allowed to profess Christianity as they choose, it is an idle thing to speak of a Christian State, if we understand thereby that the state is to be considered both a Political and a Religious body. It involves a contradiction, for the state can not be Christian in any given form, without being opposed to those who are Christians in a different form. It follows that in a state where all forms of Christianity are allowed, the state is not Christian, and it gives, or ought to give, no more encouragement to one form of Christianity than to another. It allows to all the free exercise of their religion, it subjects all alike to the same rules and restraints, it gives its aid and encouragement to all on equal terms. How far it shall give its aid, and in what form, is a matter that it is not necessary to determine here. It is enough to show that in a state which allows all forms of Christianity, the state as such is not Christian, and that when the principle of the free profession of any form of Christianity is once acknowledged, from that time the state has abandoned the character of being Christian as a state. The practical consequences of this must be that whatever remains there may be in an old state of this identity of a Church and a state, or, as it is sometimes expressed, union of church and state, the course of events, if it proceeds onwards in the same direction, must in time efface every trace of this union.

If a state, besides allowing the profession of Christianity in any form, shall likewise allow the open profession of any other faith, that is not Christian, it is still more absurd to speak of the state, as such, being Christian. It is, as a state, as much non-Christian as Christian; and it must, to be consistent, give its protection to those who are not Christians as much as to those who are Christians, and as a state it must make no distinction between those who are not Christians and those who are.

If the number of those who profess some faith which is not Christian should increase and approach to the number of those who are Christian, such a State

would be threatened with anarchy or a revolution. But the amount of risk of this kind is not great; for as the world stands at present, there seems little danger of a Christian country becoming Mohammedanized, and not much prospect of a Mohammedan country becoming Christianized.

The practical conclusion is, that in a State where perfect religious freedom, as it is termed, exists, the State treats all religious associations or communities alike: it shows no favour, extends no aid, and gives no countenance to one more than to another. This is the true conclusion that is deduced where a State which had once one religion, and only one, and allowed no other, has so changed this its fundamental polity as to allow all religions to be professed openly, freely, without penalty, persecution, or restraint.

In all that we have said on Education as a subject of legislation, it is assumed either that the state can enforce, if necessary, that which it enacts; or that the enactments of the state will be only the expression of the public will; or that they will be founded on reasons so clear and convincing as to receive, when promulgated, the assent and support of a majority large enough to secure their being carried into effect. If some one of these conditions cannot be fulfilled, the legislation is premature, and will probably be injurious.

The extent of that department of Education with which the legislature should not interfere can only be fixed with precision by ascertaining the extent of its proper, that is, its useful interference. We may state, however, in general terms, that the early and domestic Education of the young of both sexes is in nearly all, perhaps all, modern political systems, placed beyond the reach of direct legislative control by the constitution of modern society. But inasmuch as one of the great functions of government is the instruction, direction, and superintendence of the teaching body, even the domestic Education is not beyond its influence, but will be subjected to it in precisely the same degree as the state shall succeed in forming a body of good teachers. For the importance and value of Education (in some sense or other: it matters not here in what sense) are universally admitted. The objects of Education, it is true, are often misunderstood by parents and those who have the charge of youth, and the means are as often ill-calculated for the end proposed. But this is only a consequence of ignorance, not an indication that Education is undervalued. When better objects and better means are proposed, whether by individual example or by associations of individuals called societies, or by the state, such objects and means will be readily embraced by all who can comprehend them. It being assumed that the objects and means thus presented are desirable in themselves, there can be no obstacle to the reception of them, so far as the state allows the reception to be voluntary, except the ignorance and prejudices (which are, in fact, only ignorance under another name) of those to whom they are proposed. But till this obstacle which ignorance presents is overcome, nothing can be effected in the way of improvement; and it being admitted, that as to the department of education under consideration, direct legislation is not the proper means, some other means must be adopted. Individuals and societies often effect their benevolent objects by example, and by the authority of their name and character. The state may do the same. The influence of authority and example is in all countries most efficient when the sovereign power calls them in to its aid. Individuals may do much; societies have done more; but Society (the whole, in its collective power) is the body from which all improvements must come that are calculated to operate on the mass. From these considerations we conclude that if any state seriously and anxiously apply itself to the business of forming a body of teachers, it is impossible to foresee how far the beneficial influence of such a body, well organized, may extend. It may penetrate into the house of the wealthy, where the child who is born to the possession of wealth is not thereby secured in the enjoyment of it, or against any one calamity of human life. His wealth may be wasted by improvidence; his health may be enfeebled by indolence and debauchery; his under-

standing may be cramped and corrupted by vicious Education and bad example; and he may become an object of detestation and contempt, though born to the command of wealth sufficient to purchase all the luxuries that combined ingenuity and industry can produce. This influence may also reach, and perhaps sooner and more effectually reach, the hovels and the garrets of the poor, where thousands of children are now brought up under such circumstances, that to be unhealthy, vicious, criminal, and unhappy, are the only results which, as a general rule, can follow from the given conditions of their existence. When the unhappy wretch, who cannot be other than what he is, has at last transgressed the limits of the positive morality of society, and got within the verge of the penalties of the law, his crimes are blazoned forth by the public prints, the respectable part of society are shocked at the disclosures, and are only relieved from their pain when the criminal is hid in a prison, or his life is taken by the executioner. But the example is soon forgotten, and misery and vice fester in the very heart of society unheeded, till some new warning again startles it from its lethargy.

Some zealous promoters of education set great value on books as a means of improvement, and much has been done towards supplying all classes of society with better elementary works. This is a department that perhaps should not be overlooked by the State; for good books are of course better than bad. But no elementary books for learners will ever effect any great change. If the teachers are made what they ought to be, books are of little importance for learners; and if the teachers are not well trained, a good book in their hands will not be much more efficacious than a bad one. The kind of elementary books most wanted are books for the use of teachers. Those who lay so much stress on books for learners, and especially for the children of the poor, speak as men who know little of practical education.

It may appear almost superfluous to state that the true interest of the sovereign power, considered in all its bearings, must coincide with the interest of the governed; the difference in forms of government or in the distribution of the sovereign power being mainly to be considered a difference in the instruments or means by which an end is to be obtained. But still this difference is important. Where the sovereign power is in all those who as individuals are subject to it, the coincidence of power and of interest is complete; and the nearer any form of government approaches to this distribution of power, the more obvious and the stronger is the principle laid down. The principle may express a common-place truth; but the consequences that flow from it are numerous and important. When it is clear that the state can promote the general good by its regulations, its business is to make regulations. If regulations will not promote the general good, that is a reason for not making them. Now, to protect a man in the enjoyment of his property, and to preserve him from the aggressions of others, is a main part of the business of governing. For this purpose restraints and punishments are necessary: immediately, to protect the injured, and give compensation, when it can be given; remotely, to prevent others from being injured, and, so far as it can be done, to reform the offender. But the punishment of any offender, in its extremest shape, can do little more than prevent the same person from offending again. Those who are deterred from crime by his example can at any rate only be those to whom the example is known, and they are a small portion even of the actual society. Generally, then, those who do not offend against the laws, do not offend, either because they have been sufficiently educated to avoid such offence, or because the opportunity and temptation have not been presented to them, or because they know that punishment may follow the crime. But a large class of offenders have not been sufficiently educated to enable them to avoid the commission of crime; a very large number are brought up amidst the opportunities, the temptations, and the example of crime, to oppose all which the single fact of knowing that the crime *may* be punished (and even that amount of knowledge is not always possessed by the criminal) is

all the means of resistance that such persons are armed with. In societies which boast of their wealth, their civilization, and their high intellectual cultivation, such is the feeble barrier opposed by those who have the government of a people between thousands of their fellow-citizens and the commission of crimes the penalties of which are always severe and often cruel.

If the general considerations which we have urged are of any weight, there is no branch of legislation which comprehends so many important questions as are comprehended in the word Education, even when taken in its ordinary acceptation; but when viewed in all its bearings, it is of all questions most peculiarly that which it concerns the present age and the present state of society to determine. That Education was an integral, an essential part of legislation, was clearly seen by the Greeks, to whom belongs the merit of having approached, and often having solved, nearly all the important questions that affect the constitution of society. It was their good fortune to contemplate many truths from a nearer point of view and in a clearer light than we can do now. The relations of modern society are so numerous and complicated, that the mind is bewildered amidst the multiplicity and variety of facts, the claims of opposing interests, and the number and magnitude of the objects which are presented for its consideration. It is only by keeping ourselves as free as possible from mere party influences, and steadily looking to the general welfare as the end to be attained by and the true test of all political institutions, that we can hope to discover and apply the principles which shall secure, so far as such a thing can be secured, the universal happiness of a nation.

"That the legislator should especially occupy himself with the education of youth, no one can dispute; for when this is not done in states, it is a cause of damage to the polity (form of government). For a state must be administered with reference to its polity; and that which is the peculiar characteristic of each polity is that which preserves and originally constitutes it; as, for instance, the democratical principle in a democracy, and the oligarchical in an oligarchy; and that which is the best principle always constitutes the best polity. Further, in every occupation and art a person must receive previous instruction and discipline, in order to the exercising of the occupation or art; consequently also to the enabling him to the exercise of virtue. Now, since the end of every state is one, it is evident that the education must be *one*, and of necessity the same for all, and that the superintendence of the education must be with the public and not with individuals, as it now is, when each individual superintends his own children singly, and teaches them what he chooses. But when things are matter of public concern, the discipline pertaining to them must also be matter of public concern; and we must not consider any citizen as belonging to himself, but all as belonging to the state; for each is a part of the state, and the superintendence of each part has naturally a reference to the superintendence of the whole. In the matter of education, as well as in other matters, the Lacedæmonians deserve praise; for they take the greatest pains about the education of their children, and that, too, as a public concern. That, then, a state ought to legislate on education and make it a public concern, is clear; but what education is, and how education must be conducted, is a subject for consideration." (Aristotle, *Politick*, viii. c.)

EFFENDI is a Turkish word, which signifies 'Master, Monsieur,' and is subjoined as a title of respect to the names of persons, especially to those of learned men and ecclesiastics, e. g. *Omar Effendi*, *Ahmed Effendi*, in the same manner in which *Agha* is placed after the names of military and court officers. The word Effendi occurs also as part of some titles of particular officers, as *Reis Effendi*, the title of the principal secretary of state and prime minister of the Ottoman empire, which is properly an abbreviation of *Reis-al-Kottâb*, *i. e.*, 'the head or chief of secretaries or writers.'

EGG-TRADE. The supply of apparently insignificant products of rural industry is often a branch of trade of considerable importance in this country. All these products must be obtained

through the medium of dealers or shopkeepers by the non-agricultural part of the population; and even those who are employed in agriculture are, generally speaking, supplied with the products which they raise in the same way as those who have no connexion with the soil. There is no large class of persons who consume the products of their labour.

In 1835 the value of eggs exported from Ireland to Great Britain was 68,687*l.*; and perhaps at the present time it may exceed 100,000*l.* At 4*d.* per dozen the number of eggs which this sum would purchase would be 72,000,000. From France and Belgium we imported 96,000,000 eggs in 1840; on which the duty of one penny per dozen produced 34,450*l.* Nine-tenths of the foreign eggs are from France. The departments nearest to England, from the Pas de Calais to La Manche, are visited by the dealers, and their purchases often produce a scarcity in the country markets. At most of the ports of these departments, from Calais to Cherbourg, some vessels are employed in the egg-trade. The weight of 80,000,000 eggs will not be far short of 2500 tons. In the last three years the importations of foreign eggs were as follows:—

1842 . . .	89,548,747
1843 . . .	70,415,931
1844 . . .	67,487,920

The consumption of eggs at Paris is estimated at one hundred millions a-year.

A hen of the Polish breed will lay 175 eggs in one year. Their weight will be between 13 and 14 lbs.

ELECTION is when a man is left to his own free will to take or do one thing or another which he pleases (*Termes de la Ley*); and he who is to do the first act shall have the election. If A covenants to pay B a pound of pepper or saffron before Whitsuntide, it is at the election of A at all times before Whitsuntide which of them he will pay; but if he does not pay either before the time fixed, then it is at the election of B to sue for which he pleases. If a man give to another one of his horses, the donee may take which he chooses; but if the donation be that he will give one of his horses (in the future tense), then the election is in the donor.

Courts of equity frequently apply the principle of election in cases where a party has inconsistent rights, and compel him to elect which he will enforce: as, if A by his will assumes to give an estate belonging to B to C, and gives other benefits to B, B cannot obtain the benefits given to him by the will unless he gives effect to the testator's disposition to C. It does not appear to be quite settled whether the party who elects to retain his own property in opposition to the instrument is bound to relinquish only so much of the property given to him as will be sufficient to compensate the disappointed parties, or whether his election will be followed by absolute forfeiture of the whole. The arguments on both sides are ably stated 1 Roper, Husband and Wife, 566 n.; 1 Swanst. Reports, 441; 2 Coke's Repts., 35 b., Thomas's note. The principle of election is equally recognized in courts of law, though they are seldom called to deal upon it, except where the alternative is very distinct, or the party has already elected. Indeed this principle is of universal application, and prevails in the laws of all countries; it is applicable to all interests, whether of married women or of infants; to interests immediate, remote, or contingent; to copyhold as well as to freehold estates; to personalty as well as to realty; to deeds as well as to wills.

Courts of equity also will compel a plaintiff suing at law as well as in equity, or in a foreign court as well as in the court in England, for the same matter, at the same time, to elect in which court he will proceed, and will restrain him from pursuing his rights in all others. There are some exceptions to this doctrine, as in the case of a mortgagee, who may proceed in equity for a foreclosure, and on his bond or covenant at law at the same time; but this arises from the difference of the remedy, and from the original agreement to give the concurrent remedies: and even in such a case a court of equity will restrain a mortgagee from enforcing his judgment at law upon the bond or covenant, if he is not prepared to deliver up the mortgaged property and the title-deeds belonging to it.

On Election under a will in the Roman

Law see *Dig.* xxxiii. tit. 5, De Optione vel Electione Legata: and as to the French Law, see the *Code Civil*, art. 1189, &c., Des Obligations Alternatives.

The term Election is borrowed from the Roman Law. The word *optio* often occurs in the Roman writers to express that a man may choose of two or more things or conditions, which he will take. The instances of election and option given in the title of the Digest, above referred to, are limited to options given by way of legacy, which is the subject treated of in that part of the Digest. Probably the legal meaning of election and option was limited to election under a testament.

ELECTION-COMMITTEES. The course of elections of members of the House of Commons from the issuing of the writs to the returns made to the Clerk of the Crown is briefly sketched under the head HOUSE OF COMMONS. The Clerk of the Crown certifies the returns made to him to the House [CLERK OF THE CROWN.] The mode of adjudicating election-petitions is the subject of the present article.

Till 1770, when the act well known as the Grenville act was passed, questions of controverted elections were decided by the whole House of Commons: and every such question was made a party contest. The Grenville act introduced a plan, which, with several modifications, continued till 1839, of appointing committees for the trial of election petitions by lot. Since 1839 a different system has been in operation, under which the choice of members of election-committees has not been left to chance, and their individual responsibility has been increased by diminishing the number of members. By the 7 & 8 Vict. c. 103 (passed last year, 1844) the number of members of an election-committee was reduced from seven to five, including the chairman.

The 7 & 8 Vict. c. 103, now regulates the constitution and the proceedings of committees on controverted elections.

At the commencement of every session, the Speaker appoints by warrant six members of the House to be a General Committee of Elections. The General Committee of Elections, when appointed, proceed to select, "in their discretion, six, eight, ten, or twelve members, whom they shall think duly qualified, to serve as chairmen of election-committees;" and the members so selected for chairmen are formed into a separate panel, called the Chairmen's Panel. The members of the General Committee of Elections are excused from serving as members of election committees, and all members of the House of Commons above the age of sixty are also excused from this service. The House also allows other special grounds of exemption; the principal ministers for instance are excused from serving on election-committees, so long as they hold their offices, on account of their official duties. After the General Committee of Elections have appointed the Chairmen's Panel, they divide the remaining members of the House who are not exempted from service, into five panels; and members are chosen to serve on elections from these panels, in an order of succession determined by lot. All election-petitions are referred by the House to the General Committee of Elections; and this General Committee give notice, as provided by the act, of the days on which particular election-committees will be appointed, and of the panel from which members will be taken. "The General Committee shall meet at the time appointed for choosing the committee to try any election-petition, and shall choose from the panel then standing next in order of service, exclusive of the chairmen's panel, four members, not being then excused or disqualified for any of the causes aforesaid, and who shall not be specially disqualified for being appointed on the committee to try such petition for any of the following causes; (that is to say) by reason of having voted at the election, or by reason of being the party on whose behalf the seat is claimed, or related to the sitting member or party on whose behalf the seat is claimed by kindred or affinity in the first or second degree, according to the canon law." (§ 55.) At least four members of the general committee must agree in the appointment. On the same day on which the general committee choose the members of an election-committee, the chair-

men's panel choose from themselves a chairman for the committee, and communicate the name of the chairman selected to the general committee. The names of the chairman and members selected are thus communicated to the petitioners and sitting member or members, who may object to any of the members on any ground of disqualification specified in the 55th section of the act, but on no other ground. If any member is shown to be disqualified, the general committee select another; or if the chairman is disqualified, they send back his name to the chairmen's panel, who proceed to choose another chairman. The five members finally chosen are afterwards sworn at the table of the House "well and truly to try the matter of the petitions referred to them, and a true judgment to give according to the evidence."

Such is a general sketch of the present mode of constitution of election-committees: for other details the reader must refer to the act itself, or to Mr. May's Treatise on the Law of Parliament, pp. 341-373. It is a matter of practice for the General Committee of Elections to take the four members of an election committee equally from the two sides of the House.

The second section of the act defines election-petitions, and specifies by whom they must be signed. Election-petitions are petitions complaining, 1. Of an undue election, or, 2. That no return has been made to a writ on or before the day on which the writ was returnable, or, 3. If the writ be issued during any session or prorogation of Parliament, that no return has been made within fifty-two days after the date of the writ, or, 4. That a return is not according to the requisition of the writ, or 5. Of special matters contained in the writ; and they must be signed by some person claiming therein to have had a right to vote at the election, or to have had a right to be returned, or alleging himself to have been a candidate at the election.

All election-committees are empowered to send for persons, papers, and records, and to examine any one who may have signed the petition, unless it shall appear that he is an interested witness, and to examine all witnesses upon oath, which is to be administered by the clerk attending the committee. Election-committees are the only committees of the House of Commons in which evidence is taken upon oath. Any one giving false evidence is made liable to the penalties of wilful and corrupt perjury.

Parties complaining of or defending a return are required to deliver in to the clerk of the General Committee of Elections lists of the voters intended to be objected to, with the several heads of objections, not later than six in the afternoon of the sixth day next before the day appointed for choosing the committee to try the petition: and the election-committee cannot enter into evidence against any vote, or upon any head of objection, not included in the lists.

The committee are required to decide "whether the petitioners or the sitting members or either of them be duly returned or elected, or whether the election be void, or whether a new writ ought to issue." Their decision on these points is final between the parties: and the House carries it into execution.

ELECTOR. [COMMONS, HOUSE OF; MUNICIPAL CORPORATIONS.]

ELOPEMENT. [DOWER.]

EMANCIPATION. [PARENT AND CHILD.]

EMBARGO, the word used to denote the act by which any government lays an arrest on ships to prevent their leaving its ports. On the breaking out of war with any nation it has been usual for the government of each country to lay an embargo upon such of the enemy's ships as are within reach, with a view to their being declared good and lawful prize. During the progress of war, when any expedition is on foot against the enemy, and it is desirable to keep the circumstance from the knowledge of the party to be attacked, it is usual to lay an embargo upon all private vessels, as well those under the national flag as foreign vessels, until the object to be attained by secresy is accomplished. An embargo may also be laid by the government upon ships belonging to its subjects with a view to their employment for the service and defence of the nation. In all these cases

it is clear that embargoes are detrimental to commerce; the only case in which they have an opposite character is when a foreign vessel of war or privateer frequents a neutral port, and is restrained from quitting the same until a certain time shall have elapsed after the departure from the port of any vessel of which it might otherwise make prize.

EMBEZZLEMENT. [AGENT.]

EMIGRATION may be defined to be a man's leaving his native country with all his property to settle permanently in another. Emigration is therefore necessarily implied in the word Colonization, and it is by the terms of our definition easily distinguished from a man's temporary absence from his native country, and from the kind of absence specially called Absenteeism.

Though a man may be properly called an emigrant who leaves Great Britain or Ireland, for instance, and settles in France or Germany, or elsewhere in Europe, the term has in modern times come to have a more restricted and particular sense. By the term emigrant we generally understand one who leaves an old and thickly peopled country to settle in a country where there is abundance of land that has never been cultivated before, and where the native population is thinly scattered, and the foreign settlers are yet either few compared with the surface or none at all. The countries to which emigration is mainly directed at present are the British possessions in North America, the United States of North America, and the great island of Australia, with Van Diemen's Land and New Zealand.

An emigrant to any of these remote countries must be either a capitalist or a labourer, or he may combine in himself both conditions; but even a mere labourer cannot emigrate without some capital, though the amount may be only enough to convey him to the spot where his labour and skill will be in demand. It was long a prevalent notion among nations, or perhaps we may rather say with those possessed of power at the head of nations (who have generally been slower in learning any great practical truth than the mass of the people, whose understanding is sharpened by a nearer view of their own interest), that emigration should be discouraged or prevented, as tending to weaken a nation. The objection, we believe, was generally founded rather on a notion that the nation lost by its diminished population, than that it suffered from the abstraction of capital. As to the matter of population, however, some observers even then could not fail to remark, that emigration did not seem to diminish the population, but that on the contrary it seemed to be soon followed by an increase. This was observed with respect to Portugal at the time when she was extending her conquests and colonies, and is a fact confirmed by more recent experience, the explanation of which presents no difficulty. The abstraction of capital, skill, and industry might seem, and indeed is primarily, so much good taken from the mother country; but inasmuch as the emigrants retain in their new settlements, through the medium of commercial exchange which is daily becoming more rapid and easy, a connexion with the parent state, it may be and often is the fact, that they ultimately contribute more to the wealth of the mother country when in the new settlements than they could have done at home. Many of those, for example, who settle in the western states of America or in Canada with no capital beyond their hands, by their industry become the possessors of a well-cultivated piece of land, and ultimately consume more of the products of British industry, for which they must give something in exchange, than if they had remained in their native country: and as, in order that emigration to new countries may be a successful undertaking to those who emigrate, and ultimately advantageous to the mother country, there must be an emigration both of capitalists and labourers, it would seem to follow that a state, if it consult the happiness of its citizens, should place no impediments to the emigration either of capitalists of all kinds or of labourers or artisans of any kind, but should on the contrary give reasonable facilities.

If a state then should be wise enough not to discourage emigration, it may be asked, should it aid and direct it? So far as a state should aid and direct emigra-

tion, there must be two distinct objects kept in view by the state; one must be to benefit the parent country, the other to benefit those who emigrate. On the contrary, as to the individual who emigrates, whether he emigrates under the protection and direction of the government or not, his sole object is of course to better his own condition.

One cannot well conceive why a state, or any section or part of a nation, should make any contribution or raise any fund for the purpose of aiding emigration, except it be with the view of bettering the condition of some who cannot find employment at home, and at the same time adopting some systematic plan for improving the condition of those who are left behind. Yet any system of emigration thus conducted by government, or by societies, or by the inhabitants of particular districts, would fail in its primary object, relief to the emigrants, unless a corresponding amount of capital should be taken out of the country by other emigrants who might settle in the same place to which the emigrant labourers were sent. To effect such an adjustment between capital and labour, not only should both these elements of wealth in due proportion be transported to the new country, but such proportion should, for some time at least, be maintained by the body which superintends such system of emigration; an arrangement which seems impracticable, except by some such provisions as are hereinafter mentioned.

It is further to be observed that, as no persons can ever succeed as emigrants who are not sober, intelligent, and industrious, and as such alone are consequently fit people to go to a new country, such alone should be sent out by a state or a society, if it interferes in the matter of emigration. But if a large number of the most industrious labourers should emigrate from a given district, and leave behind them the worthless and idle, though the emigrants might better their condition and improve the settlement of which they go to form a part, the mother country would be no gainer by this change. We are not inclined to consider that any advantage, at all commensurate to the expense, would result from any emigration, however extensive, from districts where there is a superabundant and pauperized, or a pauperized and not superabundant population. If the idle, the ignorant, and the vicious were exported wholesale, they would only die a few years sooner in the land of their new settlement, without conferring any benefit on it, and those of the same kind who were left behind would hardly be more susceptible of improvement in consequence of the removal of any part of their numbers which did not amount to pretty nearly the whole number; while the industrious and the intelligent, who, by the supposition, remain at home and are willing to labour whenever it is in their power, would hardly derive any benefit by this removal of the bad from among them, at all commensurate to the amount of capital which must be expended on such wholesale exportations. Besides, as already observed, unless a proper supply of emigrant capitalists can be secured, all general plans for the emigration of labourers can only lead to disappointment and starvation. Any plan, therefore, which shall have for its object the amelioration of a population sunk in ignorance or debased by pauperism, must be one of an internal character, one which must gradually and on certain fixed principles aim at removing the evils which exist in the social system. Emigration must be left to the free choice of individuals, and must be recommended to the young, the sober, and industrious solely on the grounds of offering to them a reasonable prospect of bettering their condition in a new country.

The disadvantages of emigration however, when there is no plan, no controlling or directing power, are obvious. Emigrants often go to a new country without any definite or clear notion of what they are going to. Dissatisfied or unhappy at home, imagination pictures to them a remote and unknown country as an asylum from all the evils of life; or if they have any distinct idea of the new kind of existence which they are going to adopt, they often underrate the difficulties of the undertaking, or form a false estimate of their own capabilities to meet them. It is no wonder then that so many, on landing in the New World, are startled at the

obstacles which then stare them in the face, and shut their eyes to the real advantages, such as they are, which a fertile unoccupied soil presents to a hardworking industrious man.

We have stated that any system of emigration for labourers without a corresponding emigration of capitalists would be fruitless; it is also obvious that if capitalists only were to emigrate without being able to secure a supply of labour, the result would be equally unfortunate.

Considerations like these led to the formation of a scheme of emigration which was first brought into operation in the colony of South Australia. "The distinguishing and cardinal principles of the colony of South Australia are, that all public lands shall be sold, and that the proceeds of the sale shall be employed in conveying labourers to the colony." Further: "It is essential to the prosperity of a new colony in which there are neither slaves nor convicts, that there should be a constant supply of free labourers willing to be employed for wages. No productive industry worthy of the name can be undertaken, unless several hands can be put on the same work at the same time; and if there be not, in a colony in which the compulsory services of slaves or convicts cannot be obtained, a constant supply of labour for hire, no extensive farm can be cultivated, no large and continuous work can be carried on, and the capital imported must perish for want of hands to render it reproductive." (*First Annual Report of South Australian Commissioners*, 1836.)

It was therefore the object of the commissioners to prevent the labourers, for some time after their arrival in the colony, from purchasing land. This was done by fixing the price of land sufficiently high to prevent the labourer from being tempted too soon to exchange that condition which is for the time the most profitable both to himself and the body of emigrants for the apparently higher character of a landowner.

It is justly remarked in the Report that the result of such premature purchases "would be alike disastrous to the capitalist and to the labourer; as the supply of labour for hire being thus diminished, improvements requiring the co-operation of many hands would be suspended, and capital would waste and perish for want of means to use it; and the labouring population becoming separated upon small patches of land, each family would be obliged to perform every species of work for themselves; and the absence of all division of employment and combination of labour would so reduce the efficacy of their industry, that instead of advancing in wealth and civilization, they would fall back to a semi-barbarous state." Such a result has already been witnessed in numerous new settlements, and such a result must inevitably follow the dispersion of small capitalists and labourers who aspire to be land-holders over a large uncultivated surface, however rich it may naturally be.

The mode in which unoccupied Land is disposed of in the colonies has, it will be seen, a most important influence on the condition and welfare of immigrants.

By the application of a general principle of law the waste lands in the British colonies were considered to be vested in the Crown, and that every private title must rest upon a royal grant as its basis. But since 1831 another principle has been acknowledged and observed: that the Crown holds the lands in question in trust for the public good, and cannot, without a breach of that trust on the part of the responsible ministers of the government, be advised to make to any person a gratuitous donation of any such property. It is held in trust, not merely for the existing colonists, but for the people of the British empire collectively. It must be appropriated to public uses and for the public benefit. (Instructions addressed by Lord John Russell when Secretary of State for Colonial Affairs, 14th Jan. 1840.) The Land Sale Act for the Australian Colonies (5 & 6 Vict. c. 36) prohibits land being alienated by her Majesty, or by any one acting under her authority, except by sale, and in the manner directed by the act.

Down to the year 1831 no regular or uniform system of selling land appears to have been adopted in the British colonies. In place of such system conditions

were attached to the occupation of land under the name of Quit-Rents, money payments, or the cultivation of the soil; but these conditions were not effectually enforced, and in fact it was generally found impossible to enforce them. Land was profusely granted to individuals in large tracts, and as cultivation was not enforced, and no roads were made through these tracts, they interrupted the course of improvement. Under the old system lands in the colony of the Cape of Good Hope, amounting to upwards of thirty-one million acres, have been disposed of for less than 46,000*l.* In Prince Edward's Island the whole of the land was granted in one day to absentee proprietors upon terms which have never been fulfilled. The influence of these proprietors with the Home Government prevented such measures being adopted as were calculated to enforce the settlement of the grants, and consequently the greater part of them remained chiefly in a wild state. (*Report of Mr. C. Buller, M.P., to the Earl of Durham, on Public Lands in British North America*, 1838.) This Report contains an account of the system of granting lands in each of the provinces of British North America; and in all of them it appears to have been injurious to the public interests.

In 1831 the Earl of Ripon framed certain regulations which required that all land in the colonies should be disposed of at a minimum upset price for ready money only. In 1842 an act was passed (5 & 6 Vict. c. 36), already noticed, "for regulating the sale of waste lands belonging to the Crown in the Australian colonies." The chief provisions of this statute are given in a subsequent part of this article under the head "Australian Colonies and New Zealand," to which islands the act also applies. The expense of making surveys, which are usually from 4*d.* to 4½*d.* an acre, and other expenses connected with the sale of the land, are, under this act, the primary charges on the land fund. The rest of the proceeds are applicable to the public service of the colony, after one-half at least has been appropriated to the purposes of immigration.

The select committee of the House of Commons on the disposal of lands in the British colonies, which sat in 1836, recommended that the whole of the arrangements connected with the sale of land, including both the price and the precise mode of sale, should be placed under the charge of a land board in London.

In January, 1840, commissioners were appointed under the royal sign manual to act as a Land and Emigration Board. The sale of the waste lands of the Crown throughout the British colonies is regulated by the commissioners, and they apply the proceeds of such sales towards the removal thither of emigrants from this country, when the land-fund is appropriated to this object. This board is a subordinate department of the Colonial Office.

In none of the British colonies is the disposal of unoccupied lands conducted in such a systematic and perfect manner as in the United States of North America. The unoccupied lands within the limits of the Union are vested in the Federal government. There is a General Land Office at Washington, under which there are above forty district land-offices in other parts of the Union. Connected with the Land Office is a Surveying Department. The surveys are founded upon a series of true meridians. The greatest division of land marked out by a survey is called a township, and it contains 23,040 acres, being a square of six miles to the side. The township is divided into thirty-six equal portions, or square miles. These portions are called sections, and they are subdivided into quarter sections of a hundred and sixty acres each. The quarter sections are finally divided into two parts, called half-quarter sections. Section sixteen (one square mile) in every township is reserved for schools in the township. All salt springs and lead-mines are also reserved, and are let on lease by the general government. In 1820 purchasers of land were no longer allowed to obtain land on credit: and in the same year the minimum price of land was reduced from two dollars to one and a quarter dollar per acre. The mode of sale is by public auction, and lands not sold on the day

fixed may be bought by private contract at the minimum price. Squatters, or persons who settle on the land without a title, have pre-emptive rights. [SQUATTER.]

Of the public lands of the United States there had been sold up to 1843, 107,796,536 acres, and the amount received for the same was 170,940,942 dollars (36,000,000*l.*). In the year 1836, the receipts from land sales amounted to 25,167,833 dollars. The net residue of the proceeds of lands are distributed amongst the different states under an act passed in 1841. In 1843 the estimated quantity of land remaining to be sold within the limits of the union was 1,084,064,993 acres, and of this quantity 272,646,356 acres had been surveyed.

The following is an abstract of the regulations at present in operation in the British colonies for the disposal of waste lands:—

Canada.—By a provincial act of 1841 Crown lands are to be sold at a price to be from time to time fixed by the governor in council. The proceeds of the land sales are not specially appropriated, but form part of the general colonial revenue. The prices fixed for the present are as follows:

For Canada, West (Upper Canada), 8*s.* currency (about 6*s.* 7*d.* sterling) per acre; for Canada, East (Lower Canada), in the county of Ottawa, and south of the river St. Lawrence, to the west of the Kennebec road, 6*s.* currency (about 4*s.* 11*d.* sterling); and elsewhere in that division of the province, 4*s.* currency (about 3*s.* 3½*d.* sterling) per acre. These prices do not apply to lands resumed by government for non-performance of the conditions of settlement on which they were granted under a former system now abolished, nor to lands called Indian Reserves, and Clergy Reserves; which three classes are, as well as town and village lots, subject to special regulations.

The size of the lots of country lands is usually 200 acres; but they are sold as frequently by half as whole lots.

The following are the conditions of sale at present in force:—1st. The lots are to be taken at the contents in acres marked in the public documents, without guarantee as to the actual quantity contained in them.—2d. No payment of purchase-money will be received by instalments, but the whole purchase-money, either in money or land scrip,* must be paid at the time of sale.—3rd. On the payment of the purchase-money, the purchaser will receive a receipt which will entitle him to enter on the land which he has purchased, and arrangements will be made for issuing to him the patent without delay. The receipt thus given not only authorizes the purchaser to take immediate possession, but enables him, under the provisions of the Land Act, to maintain legal proceedings against any wrongful possessor or trespasser, as effectually as if the patent deed had issued on the day the receipt is dated.

Government land agents are appointed in the several municipal districts, with full power to sell to the first applicant any of the advertised lands which the return open to public inspection may show to be vacant within their districts.

Nova Scotia.—The public lands are here also sold at a fixed price of 1*s.* 9*d.* sterling per acre, payable at once. The smallest regular farm lot contains one hundred acres. Any less quantity of land may be had, but the cost would be the same as for one hundred acres, viz. 8*l.* 15*s.*, the minimum sum for which a deed of grant is issued.

New Brunswick.—The mode of sale in this province is by auction. The upset price is generally about 2*s.* 8*d.* sterling (3*s.* currency), but varies according to situation, &c. The average price of ordinary country lands has been from 4*s.* 6*d.* to 9*s.* sterling (5*s.* to 10*s.* currency) per acre, according to situation, &c. Fifty acres is the smallest quantity usually sold.

Prince Edward's Island.—In this colony the Crown has little land at its disposal, namely, about 8400 acres. Sale by auction prevails, and the average price realized for ordinary country lands has been from 10*s.* to 14*s.* currency per acre.

Newfoundland.—There exists no official return of the surveyed and accessible

* This is Scrip issued by the local government in satisfaction of certain old militia claims.

land at the disposal of the Crown in this colony. The area has been estimated at about 2,300,000 acres, of which about 23,000 have been appropriated. Although the agriculture of the province is progressively increasing, there are yet comparatively few persons exclusively employed in it, the population being nearly all engaged in the fisheries.

The Falkland Islands.—The lands in this colony are now open for sale. The mode of sale is the same as that adopted in the Australian colonies. The upset price of country lands is, for the present, 8*s.* per acre. Town lots of half an acre each, and suburban lots of fifty acres each, will be put up at 50*l.* Deposits of purchase-money may be made in this country, in the mode prescribed for the Australian colonies, but the depositors will be entitled to nominate for a free passage six, instead of four, adult labourers, for every 100*l.* deposited.

Cape of Good Hope.—Applications for the purchase of Crown lands must be made to the governor, if the lands are situated in the western division; and to the lieutenant-governor if in the eastern division of the province. The application must pass through the surveyor-general to the land board, and if the land be unsurveyed, the applicant must deposit an amount equal to the probable expense of inspection and survey. If on inspection it be decided that the land ought not to be alienated, the deposit for survey will be returned; otherwise, the land will be surveyed and offered for sale at public auction. Should the applicant not become the purchaser at the sale, he will be entitled to a return of the preliminary expenses, which must in that case be borne by the actual purchaser; but should the lands be not then sold, the deposit will be retained until they are sold. The upset price will in no case be less than 2*s.* per acre, and should it become necessary to ascertain the amount which ought to be demanded for lands under peculiar circumstances, such amount is to be ascertained by valuation, and made the upset price at auction.

Ceylon.—In this colony the Crown lands are sold by auction, at an upset price, which is to be fixed by the governor, but which is not to be less than 1*l.* per acre. Before being put up to auction, the lands are surveyed by the government, and duly advertised.

Hong Kong.—The Crown lands will not be alienated in perpetuity, but let on leases, which are to be offered for sale at public auction. The duration of the leases will not exceed 21 years for country lands; but land for building purposes will be let on leases for 75 years, not renewable of right, but at the option of the government, and on the holder's paying an increased rent. Powers will be reserved, when necessary, for regulating the character of the buildings to be erected in particular situations.

The rent to be paid for lands designated as marine, town, or suburban lots, will be determined exclusively by public auction; but leases of country lots, if they have been once exposed to auction and not sold, may be afterwards sold by private agreement at the upset price.

The governor will decide whether there is sufficient demand to call for public sales at fixed periods, or whether the leases should only be advertised and brought into the market as they may be applied for.

The colonies in which military and naval officers are allowed privileges in the acquisition of public lands are the following:—New South Wales, Van Diemen's Land, South Australia, Western Australia, New Zealand, Ceylon, Nova Scotia, and Cape Breton, the only province in North America where privileges are still allowed. In the different Australian settlements, and in Ceylon, land is disposed of by sale only; but officers purchasing land are allowed a remission of the purchase-money. Thus field-officers of twenty-five years' service and upwards are entitled to a remission of 300*l.*; and in proportion for different periods of service and according to the rank of the officer. Subalterns of seven years' service and upwards are entitled to a remission of 100*l.*; but subalterns under seven years' standing are not entitled to any remission in the purchase of land. Regimental staff officers and medical officers of the army and navy are allowed the benefit of this rule.

In Nova Scotia and Cape Breton, allotments of land are granted to officers on the following scale and conditions, viz.—To a lieutenant-colonel, 1200 acres; to a major, 1000 acres; to a captain, 800 acres; to a subaltern, 500 acres. Military chaplains, commissariat officers, and officers of any of the civil departments of the army; pursers, chaplains, midshipmen, warrant officers of every description, and officers of any of the civil departments of the navy, are not allowed any privileges in respect of land. Although members of these classes may have been admitted formerly, and under different circumstances, they are now excluded. Mates in the royal navy rank with ensigns in the army, and mates of three years' standing with lieutenants in the army, and are entitled respectively to corresponding privileges in the acquisition of lands.

Australian Colonies and New Zealand.—These colonies are the principal field for the operations of the Land and Emigration Commissioners, as it is in them that the principle of devoting the proceeds of the sale of waste lands to emigration is capable of application on a large scale. In the colony of New South Wales the sales of land from 1831 to 1842 inclusive realized the sum of 1,090,583*l.*, out of which 951,241*l.*, or more than 87 per cent., was expended on immigration. In 1840 land was sold in the Port Philip district which produced 218,020*l.* In 1843, when the colony of New South Wales was in a very depressed state, the sum arising from the sale of land was only 11,030*l.* Immigration is therefore under a self-regulating principle: when capital is abundant, and purchases of land are made on a large scale, a fund is supplied for introducing labourers; and when the fund from the sale of land diminishes, a check is given to the introduction of redundant labour. In South Australia, from 1835 to 1840 inclusive, land was sold to the amount of 272,878*l.* In Western Australia there is scarcely any revenue from public lands, in consequence of the large grants of land which were made to individuals when the colony was established.

The following are the regulations now in force under the provisions of the Australian Land Act, 5 & 6 Vict. c. 36, for the disposal of the waste lands in the colonies of New South Wales (including the Sydney and Port Philip districts, and any other districts that may hereafter be opened), Van Diemen's Land, South Australia, Western Australia, and New Zealand:—1. All lands will be disposed of by sale alone, and must have once at least been exposed to public auction. 2. The lowest upset price will be not less than 1*l.* per acre; but the government will have power to raise the same by proclamation, though not again to reduce it. 3. The lands will be distinguished into three different classes, viz., town lots, suburban lots, and country lots. 4. Upon town and suburban lots, as well as upon a proportion not exceeding one-tenth of the whole of the country lots offered for sale at any auction, the governor will have the power of naming a higher than the general or lowest upset price; the country lots on which such power is exercised to be designated "Special Country Lots." 5. Town and suburban lots will in no case be disposed of except by public auction, but country lots which have already been put up to public auction and not sold, may be disposed of afterwards by private contract at the upset price. 6. No lands will be sold by private contract except for ready money. When sold by public auction, one-tenth at least of the whole purchase-money must be paid down, and the remainder within one calendar month, or the deposit will be forfeited. 7. Lands will be put up for sale in lots not exceeding one square mile in extent. 8. As an exception to the general regulations, and subject to certain restrictions laid down in the Australian Land Act, the governor will have it in his discretion to dispose, by private contract, at a price not less than the lowest upset price for the district, of blocks comprising 20,000 acres or more. 9. Persons will be at liberty to make payments for colonial lands in Great Britain, for which payment or deposit they will receive an order for credit to the same amount in any purchase of land they may effect in the colony, and will have the privilege of naming a proportionate number of emigrants for a free

passage, as explained in article No. 10. The deposits must be made in one or more sums of 100*l.* each at the Bank of England, to the account of Edward Barnard, esq., agent-general for crown colonies, No. 5, Cannon-row, Westminster; and the depositor must state at the time the colony in which the land is to be selected, and give notice to Mr. Barnard, and to the colonial land and emigration commissioners, of the deposit. Upon receiving Mr. Barnard's certificate that the money has been duly paid in, the commissioners will furnish the depositor with a certificate, which states the amount which he has paid, and entitles him to obtain credit for that sum in any purchase which he may effect in the colony, subject to all rules and regulations then in force. 10. For every sum of 100*l.* deposited as above, the depositor will be entitled, for six months from the date of payment, to name a number of properly qualified emigrants, equal to four adults, for a free passage. Two children between one and fourteen are to be reckoned as equal to one adult. The emigrants are required to be chosen from the class of mechanics and handicraftsmen, agricultural labourers, or domestic servants, and must be going out with the intention to work for wages. They are to be subject to the approval of the commissioners, and must, in all respects, fall within their general regulations on the selection of labourers.

In New South Wales, and in others of the Australian colonies, though to a smaller extent, a system prevails of granting licences to use lands for pasture. In New South Wales it had long been an established regulation of the government that no land should be sold beyond the part of the country laid out into counties. Beyond these boundaries, therefore, licences are granted for the occupation of such tracts as may be desired for pasture by proprietors of stock. The cost of a licence is 10*l.* a-year. The stock depastured is subject to a fixed assessment per head, the proceeds of which are applied to the maintenance of a border police. The licence is not for any determined quantity of land, and hitherto the extent of each station or "run" "has only been limited by the moderation of the parties, or the mutual pressure of the neighbouring squatters." (*Report of Land and Emigration Commissioners*, 1845.) The extent of a run usually varied from 3000 to 5000 acres. In 1843 the number of licences issued in New South Wales for the use of land beyond the boundaries was 852, "the space over which they were to take effect being unsurveyed and the extent unknown." The land occupied on these terms in New South Wales extends through fourteen degrees of latitude; from Harvey's Bay on the north to South Australia the diagonal line is 1100 miles. This large tract is divided into fifteen districts, and contained in 1844 a population of nearly 10,000 persons; and the stock consisted of 15,000 horses, 570,000 cattle, and upwards of 3,000,000 sheep. The assessment on the stock was, on sheep ½*d.*, cattle 1½*d.*, and horses 3*d.* per head. In 1844 the governor of New South Wales proposed regulations which he intended should come into operation in July, 1845, which will not leave the extent of the "runs" to the discretion of persons who hold occupation licences, but a limit will be fixed in each case. This limit is not to exceed twenty square miles (12,800 acres), or sufficient land to depasture 500 cattle or 4000 sheep; and it is proposed to define in other respects what shall be accounted a separate station or run. The proposed regulations excited great opposition in the colony. The official correspondence on this subject, accompanied with a number of documents, is published as a parliamentary paper. (Session, 1845, 267, iii.)

There are some difficulties attending the occupying of waste lands under crown licences. Without some pre-emptive rights the squatters could not be expected to make any improvements, and the consequence might be that a large population would be growing up under circumstances disadvantageous to their civilization. On the other hand, the crown is liable to lose its control over the public lands unless the pre-emptive rights which it concedes are carefully guarded. The difficulty has been met in New South Wales by the following arrangement: persons who have already been five years in the occupation of a station are permitted to buy any part

of their run, not being less than 320 acres. The land must be put up at the upset price of 20*s.* an acre, to which will be added the value of the improvements made, which are assessed according to the government regulations; and on a sale taking place, the government will receive the price which the land fetches, and the value of the improvements will be returned to the occupant if he becomes the purchaser; and if he does not, it will be paid to him out of the gross purchase-money.

Land is also occupied under licences within the colonial boundaries of New South Wales. In 1843 the number of licences issued for land thus situated was 237, and the quantity of land over which they extended was 183,859 acres. The sum paid for this limited occupation was at the rate of from 5*l.* to 6*l.* per square mile.

The pasture licence system has been adopted in South Australia, Van Diemen's Land, and New Zealand. In South Australia the licence is lower, and the assessment on stock higher, than in New South Wales. The licence costs only 10*s.* 6*d.*; but the assessment is, on sheep 1*d.*, cattle 1*s.*, and horses 2*s.* 6*d.* per head.

West Indies.—In the West Indies Crown lands are to be sold by auction at an upset price of not less than 1*l.* per acre.

In the Bahamas the mode of sale is also by auction, but the lieutenant-governor is, from time to time, to name the upset price, which is never to be less than 6*s.* per acre. Land once exposed to auction may, in the discretion of the lieutenant-governor, be afterwards sold by private contract, at not less than the upset price of such land. The ordinary size of the lots in the Bahamas is to be twenty acres, but lots of five acres may, if thought expedient, be disposed of.

The salt ponds in the Turks' Islands (within the government of the Bahamas) have been the subject of recent regulation by the Land and Emigration Commissioners. These ponds are an important public property, but they were divided annually amongst all persons, without distinction, who happened to be resident on the spot, and these shares had no real value. Instead of this plan, the ponds will in future be granted on leases, which will give the lessees a durable interest, and encourage them to make the outlay requisite for their improvement. It has already been stated that in the United States of North America salt springs are reserved by the federal government, and leased for the public benefit.

The plan under which the great land companies dispose of their lands may be ascertained by application to the secretaries of each company. The principal companies are, the Upper Canada Company, the British American Land Company, the New Zealand Company, and the New Brunswick and Nova Scotia Land Company. The first of these companies has a plan of leasing their lands, which is very advantageous to small capitalists. The South Australian Company have lands which they dispose of both by lease and sale.

The business of regulating emigration has been undertaken to some extent by the government. First an agent-general for emigration was appointed. This officer introduced many judicious plans for rendering the passage of emigrants across the ocean as free as possible from discomfort, and a code of rules was framed to secure this and other objects. The functions of the agent-general for emigration are now exercised by the Land and Emigration Commissioners. Emigrants are also protected by the Passengers' Act. The act 5 & 6 William IV. c. 5, passed in 1835, having proved insufficient for the purpose, a new act was passed in 1842 (5 & 6 Vict. c. 107). Its objects are to regulate the number of passengers in each ship, and to provide for their proper accommodation on board; to ensure a proper supply of provisions and water for their use; to provide for the sea-worthiness of the vessels; and to protect emigrants from the numerous frauds to which at various stages of their undertaking their helplessness and inexperience expose them. If the ship does not sail on the day mentioned in the agreement, the Passengers' Act compels the captain to victual the emigrants just the same as if the voyage had commenced; and they are entitled to remain on board

forty-eight hours after the ship reaches her destination.

As a further protection to emigrants and to enforce the provisions of the Passengers' Act, government emigration agents are appointed for the ports of London, Liverpool, Plymouth, Glasgow and Greenock, Dublin, Cork, Belfast, Limerick, Sligo, and Londonderry. These officers act under the immediate directions of the Colonial Land and Emigration Commissioners. They procure and give gratuitously information as to the sailing of ships, and means of accommodation for emigrants; and whenever applied to for that purpose, they see that all agreements between ship-owners, agents, or masters, and intending emigrants, are duly performed. They also see that the provisions of the Passengers' Act are strictly complied with, viz., that passenger-vessels are sea-worthy, that they have on board a sufficient supply of provisions, water, medicines, &c., and that they sail with proper punctuality. They attend personally at their offices on every week-day, and afford gratuitously all the assistance in their power to protect intending emigrants against fraud and imposition, and to obtain redress where oppression or injury has been practised on them.

In the colonies there are government immigration agents. The duties of these officers are to afford gratuitously to emigrants every assistance in their power by way of advice and information as to the districts where employment can be obtained most readily, and upon the most advantageous terms, and also as to the best modes of reaching such districts. In Canada there are immigration agents at Quebec, Montreal, Kingston, Bytown, Port Hope and Cobourg, Toronto, and Hamilton; in New Brunswick at St. John's and Fredericton; and the deputy-treasurers act as immigration agents at St. Andrew's, Bathurst, Dalhousie, and Chatham (Miramichi). There are also government immigration agents for the colonies of New South Wales (at Sydney and Port Philip) and for Van Diemen's Land, Western Australia, Southern Australia, and New Zealand.

Emigration is one of the "modes of relief" contemplated by the Poor Law Amendment Act (4 & 5 Wm. IV. c. 76). In some years a large number of persons have emigrated with the assistance of funds obtained under the act. In 1835-6 the number of emigrants was 5141, and the sum borrowed, either from the Exchequer Loan Office or from private persons, amounted to 28,414*l.* By § 62 of the Poor Law Act owners and rate-payers are empowered to raise money on security of the rates for purposes of emigration, under the authority of the Poor Law Commissioners. The sum so raised must not exceed half the average yearly rate of the preceding three years, and it must be repaid within five years. The money is advanced to emigrants by way of loan, and is recoverable against persons above the age of twenty-one, who, having consented to emigrate, refuse to do so after the expenses of emigration have been incurred; and the loan is also recoverable if persons who emigrate shall return to this country.

By the act 7 & 8 Vict. c. 101, for the amendment of the Poor Laws, it is provided that the boards of guardians are exclusively to apply money raised or borrowed for the purpose of emigration.

Under the Irish Poor Law Act money may be raised for enabling poor persons to emigrate to British colonies; but the money so raised must not exceed one shilling in the pound on the net annual value of rateable property.

The Bounty System derives its name from the mode in which the proceeds of land sales are applied in obtaining immigrants. In this case persons who introduce persons into the colony receive so much per head, according to the terms of agreement. The contractors engage to find persons willing to emigrate, and undertake to land them in the colony. This system is in force only in some of the Australian colonies. In New South Wales 51,736 persons were introduced from 1831 to 1842 under bounties.

The Land and Emigration Commissioners are required by their official instructions to prepare and issue "a distinct and compendious account of whatever relates to the agriculture, the commerce, the natural products, the physical structure, and the ecclesiastical and political institutions of

each of the colonies" in which they offer lands for sale. Lord John Russell issued these instructions, in the hope that the office of the Land and Emigration Commissioners would become the depository of information "for the assistance, not of private adventurers only, but of this (the colonial) and of every other department of the state." The Commissioners in pursuance of this object have published in a cheap form "Information for Emigrants to British North America;" a similar pamphlet relating to the Falkland Isles; and they issue occasionally a "Colonization Circular" which contains matter calculated to be of use to emigrants or persons who intend at some time to settle in the colonies. The Annual Reports of the Commissioners presented to parliament are also reprinted in a convenient form for general use. These useful matters are published by Knight & Co., London; and may be procured through any bookseller.

The average annual number of persons who emigrated in the ten years from 1825 to 1834 was 50,304; and in the ten years from 1835 to 1844 inclusive 75,293. The largest number who emigrated in any one year, in the first ten years, was 103,140, in 1832. The number in each of the last ten years was as follows:—

1835	44,478	1840	90,743
1836	75,417	1841	118,592
1837	72,034	1842	128,344
1838	33,222	1843	57,212
1839	62,207	1844	70,686

A variety of circumstances affect the extent of emigration and its particular direction. In some years the stream is increased by distress at home; in others, by the activity caused by the bounty system, and the amount raised by the sales of land in the Australian colonies; an insurrection in Canada diverts the current of emigrants to other colonies; a massacre in New Zealand, and the effects of misgovernment there, have their influence. The fluctuation in the average annual number of emigrants during the following periods is curious.

	Average annual number of emigrants.
In the 4 years ending 1828	22,500
In the 6 years ending 1834	69,000
„ 5 years ending 1839	57,500
„ 3 years ending 1842	112,500
1843 and 1844	64,000

The numbers who proceeded to the United States, British North America, the Australian Colonies, and New Zealand, in each of the following years was as under:—

	British North America.	United States.	Australia and New Zealand.
1835	15,573	26,720	1,860
1836	34,226	37,774	3,124
1837	29,884	36,770	5,054
1838	4,577	14,332	14,021
1839	12,658	33,536	15,786
1840	32,293	40,642	15,850
1841	38,164	45,017	32,625
1842	54,123	63,852	8,534
1843	23,518	28,335	3,478
1844	22,924	43,660	2,229

The destination of the emigrants who left the United Kingdom, in 1844, is more minutely given in the following table:—

Destination.	
United States	43,660
Texas	1
Central and South America	710
Canada	18,747
New Brunswick	2,489
Nova Scotia and Cape Breton	747
Newfoundland	684
Prince Edward's Island	257
Jamaica	126
British Guiana	142
Trinidad	60
Other settlements in British West Indies	168
Foreign West Indies	39
East Indies	176
Hong Kong	18
China	9
Mauritius	13
Cape of Good Hope	161
Western Africa and Madeira	250
Sydney	1,179
Port-Philip	934
South Australia	47
Van Diemen's Land	1
New Zealand	68
Grand Total	70,686

In 1844 the number of persons who emigrated from ports in England was 50,257; Scotland, 4504; Ireland, 15,925. The number of emigrants who embarked at Liverpool was 44,427, and from London only 2303. The number of cabin passengers was 4889, of whom 4070, or 1 in 12½, were from England; 663, or 1 in 7, were from Scotland; 156, or 1 in 102, were from Ireland. The destination of the English, Scotch, and Irish emigrants is shown in the subjoined table.

Went to	English.	Scots.	Irish.
United States .	39,070	1,597	2,993
Central and South America . .	668	43	—
North American Colonies . .	8,058	2,470	12,396
British West Indies	283	197	16
Foreign do. . .	38	1	—
East Indies . .	131	45	—
Hong Kong .	17	1	—
China . . .	9	—	—
Mauritius . .	9	4	—
Western Africa and Madeira . .	240	10	—
The Cape . .	153	8	—
Australian Colonies	1,581	128	520

The emigration of native labourers from China and India, and of liberated and other Africans from Sierra Leone to the Mauritius and to the British Colonies in the West Indies, it may be sufficient to mention, is under the regulation of the Land and Emigration Commissioners.

The various political questions which arise from the connexion between a parent state and colony are treated of in "An Essay on the Government of Dependencies," by George Cornewall Lewis, London, 1841.

EMPANNEL. [PANEL.]

EMPEROR, from the Latin *Imperator*. Among the early Romans the title of Imperator was bestowed by the acclamations of his soldiers in the camp on a commander-in-chief who had signalized himself by a victory. (Tacit. *Annal.* iii. 74.) In the case mentioned by Tacitus, Tiberius is said to have allowed the soldiers to salute Blæsus by the title of Imperator (Compare Velleius, ii. 125). But the word Imperator was properly applied to him who had what the Romans called Imperium, which was conferred on the Roman kings by the Comitia Curiata (Cicero, *De Repub.* ii. 17). This was the case with Tullus Hostilius, and his predecessor Numa, and his successor Ancus Marcius. Under the Republic the title was sometimes conferred on an individual for the occasion of a triumph (Livy, xxvi. 21; xlv. 35). Cicero (*Philipp.* ix. 16), defines Imperium to be "that power without which military affairs cannot be carried on, an army commanded, or a war conducted." Conformably to this we have an instance in Livius, in which the Senate refused to acknowledge a general as a commander because he had not received the Imperium in due form (xxvi. 2). In his oration on the Lex Manilia, Cicero says that a single Imperator was required to conduct the war against Mithridates (c. 2). The name used by the Greek historians of Rome to express Imperator is Autocrator (αὐτοκράτωρ), one who has full power, from which is derived the word autocrat, which is sometimes applied to the Emperor of Russia. C. Julius Cæsar assumed the name Imperator as a prænomen, or title (Imperator C. Julius Cæsar), a practice which was followed by his successors, as we may observe on their coins. (Suetonius, *Cæsar*, 76.) There are examples of this title in the coins of Antoninus, Aurelius, and other Roman emperors. On the reverse of the coin of Aurelius we observe Imp. VIII., that is Imperator octavum, or imperator the eighth time, which shows, as indeed can be proved from a variety of examples, that the Roman emperors often assumed the title on special occasions when they or their generals had obtained some signal victory. This term Imperator, under the early emperors, cannot be considered as denoting any sovereign power. But still this distinction was observed: the emperor, when the title was applied to him in his sovereign capacity, had the name Imperator prefixed, as Imperator Cæsar Augustus; but the individual to whom the honorary distinction was given on some particular occasion had it placed after his name, Iunius Blæsus Imperator, as in the Republican period.

After the time of the Antonines the

term Imperator seems gradually to have grown into common use as one of the titles which expressed the sovereign of the Roman world, though the name Princeps was also long used as indicating the same rank and power. (See the Dedication of J. Capitolinus to Constantine.) It may be difficult to state when this term Imperator became exclusively the designation of the Roman sovereign. In the introduction to the Digest (De Conceptione Digestorum), Justinian assumes the title of Imperator Cæsar Flavius Justinianus, &c., semper Augustus. In the proemium to the Institutes, Justinian uses the terms Imperatoria Majestas to express his sovereign power, and yet in the same paragraph he calls himself by the name of Princeps, a term which dates from the time of the so-called Republic, and expressed the precedence given to one particular member of the Senate. The term Princeps was adopted by Augustus as the least invidious title of dignity, and was applied to his successors.

From the emperors of the West this title, in the year 800, devolved to Charlemagne, the founder of the second or German empire of the West. Upon the expiration of the German branch of the Carlovingian family, the imperial crown became elective, and continued so until the last century. The title of Emperor of Germany now no longer exists: Francis II. laid it aside, and assumed the title of Emperor of Austria. The only other European potentate who uses the style of emperor is the autocrat of Russia, the monarchs of which country, about the year 1520, exchanged their former title of duke or great duke of Russia, for that of Czar or Tzar. In early times it was asserted by the civilians that the possession of the imperial crown gave to the emperors of Germany, as titular sovereigns of the world, a supremacy over all the kings of Europe, though such was never attempted to be exercised; and they denied the existence of any other empire: but in spite of this denial it is certain that several of the kings of France of the second race, after they had lost the empire of Germany, styled themselves Basileus and Imperator. Our own King Edgar, in a charter to Oswald bishop of Winchester, styled himself "Anglorum Basileus omnium que regum insularum oceani que Britanniam circumjacentis cunctarum que nationum quæ infra eam includuntur *Imperator et Dominus*." Alfonso VII. also, in the 12th century, styled himself Emperor of Spain. It might be easily shown how the title and rank of king and emperor have been feudalized, as it were, in passing through the ordeal of the middle ages.

ENDOWMENT. [DOWER; BENEFICE; USES, CHARITABLE.]

ENEMY. [ALIEN, p. 102.]

ENFEOFFMENT. [FEOFFMENT.]

ENFRANCHISEMENT. The Third Annual Report of the Copyhold Commissioners, dated 22nd June, 1844, gives the following information respecting the progress of enfranchisement of manors under the Copyhold Act. The Commissioners state that "enfranchisement of church property is now proceeding to a considerable extent, and there is every reason to suppose that in manors held by ecclesiastical persons the disposition to avail themselves of the act will become general." Enfranchisements had also increased in other manors, but not in the same proportion, and that the act had encouraged building, especially in the neighbourhood of London. They suggested, as an improvement, that, without being in any way compulsory on the lord, enfranchisements might be made binding on the other tenants, if two-thirds of the tenants, in number and value, agreed. At present it may happen that the lord is willing to enfranchise, and he can make arrangements with the principal tenants; but if there is a difficulty in agreeing with the smaller tenants, enfranchisement is hindered, as the lord might be left with the dregs of the manor.

ENGROSSING. [FORESTALLING.]

ENLISTMENT, an engagement to serve as a private soldier either during an unlimited period or for a certain number of years, on receipt of a sum of money. Enlistment differs from enrolment, inasmuch as it is a voluntary act, whereas the latter is, under some circumstances, rendered compulsory: as in the case of men who are selected by bal-

lot for the militia in this country, or by the conscription, for military service generally, on the continent.

The practice of impressing men to serve as soldiers, on sudden emergencies, was formerly very common in England; and it is well known that within the last half century young men were entrapped and secretly conveyed away to recruit the armies employed in the east. The discovery of this illegal and disgraceful method of obtaining soldiers was speedily followed by its abolition; and now, the East India Company's troops, as well as those of the regular army, are obtained by voluntary engagement.

The number of young men who are induced to enlist by the ambition of entering upon a course of life which appears to hold out a prospect of distinguishing themselves by gallant achievements in the field is, however, too small for the wants of the military service; and the allurement of a bounty must necessarily be presented in order that the ranks of the army may be filled. But the profession of a soldier can never possess such advantages as might induce an industrious man who can obtain a subsistence in another way to embrace it; and it is to be regretted that too frequently those who enter the service are thoughtless youths or men of indolent habits or desperate fortunes. Some attention, however, to the character of a person offering himself for enlistment is necessary if it be desired to render the service honourable; for it is found that idle and dissipated men are with difficulty brought to submit to the necessary restraints of discipline; their frequent desertions entail heavy losses on the government, and they often corrupt those who are compelled to associate with them. When circumstances render it necessary to enlist such men, it is obvious that they ought to be distributed in small numbers among the different regiments, and quartered in places remote from those from which they were taken.

By the 34th clause of the Mutiny Act, every person who has received enlisting-money from any military man employed in the recruiting service is considered as having enlisted; but within forty-eight hours afterwards notice is to be given to the recruit, or left at his place of abode, of his having so enlisted: and again, within four days from the time of receiving the money, the recruit, attended by any person employed as above-said, is to appear before a magistrate (not being a military man), when, if he declare that he has voluntarily enlisted, the magistrate is to question him concerning his name, age, and condition, and particularly to inquire of him whether he is then serving, or whether he have ever served, in the army or navy. The magistrate is then to read to the recruit the articles of war relating to mutiny and desertion, and administer to him an oath of allegiance, of which a form is given in a schedule to the act: if the recruit refuse to take the oath, he may be imprisoned till he do so.

But as the young and simple have been sometimes inveigled by illusory promises, or persuaded, while deprived of judgment by intoxication, to enlist, if a recruit, on reflection, wish to withdraw from the engagement into which he may have been surprised, it is provided by the 35th clause of the Mutiny Act that when taken before the magistrate as above he shall be at liberty to declare his dissent from such enlistment; on making which declaration and returning the enlisting-money, with 20s. in addition for the charges which may have been incurred on his account, he shall be forthwith discharged. But if he omit within twenty-four hours after so declaring his dissent to pay such money, he is to be considered as enlisted, as if he had given his assent before the magistrate.

If a recruit, after receiving the enlistment-money, and after notice of having enlisted has been left at his place of abode, shall abscond, he may be apprehended and punished as a deserter, or for being absent without leave; and if it be discovered that he is unfit for active service, in consequence of any infirmity which he had not declared before the magistrate, he may be transferred to any garrison, or veteran or invalid battalion, though he may have enlisted for some particular regiment. If it be proved that the recruit concealed the fact of his being

a discharged soldier, he may be sentenced to suffer punishment as a rogue or vagabond; and if, at the time of enlisting, he falsely denied being in the militia, he may be committed to the house of correction for a period not exceeding six months; and, from the day in which his engagement to serve in the militia ends, he is to be deemed a soldier in the regular forces.

An apprentice who shall enlist, denying himself to be such, is deemed guilty of obtaining money under false pretences; and, after the expiration of his apprenticeship, if he shall not deliver himself up to some officer authorised to receive recruits, he may be taken as a deserter. A master is not entitled to claim an apprentice who may have enlisted unless the claim be made within one month after the apprentice shall have left his service.

In the third clause of the Mutiny Act it is stated that no man enlisted as a soldier is liable to be arrested on account of any process for leaving a wife or child chargeable to a parish, or on account of any engagement to work for an employer (except that of an apprenticeship), or on account of any debt under 30*l.* And in the 41st clause it is declared that negroes, purchased on account of the crown and serving in any of the regular forces, are deemed to be free, and are considered as soldiers having voluntarily enlisted. Every military officer acting contrary to the provisions of the Mutiny Act, in what regards enlisting recruits, is liable to be cashiered, and disabled to hold any civil or military office or employment in her Majesty's service.

During the reign of Queen Anne it was the custom to enlist recruits for three years; but this period seems too short, considering the time unavoidably spent in training the men, to afford the government an advantage adequate to the expense of maintaining them; and the present practice is to enlist either for an unlimited period, as during the continuance of a war, or for certain defined numbers of years, which vary in the different classes of troops. For the infantry the period is seven years; for the cavalry ten years; and for the artillery twelve years; but if the person enlisting be under eighteen years of age, the difference between his age and eighteen years is added to each period. The enlistments for the Honourable East India Company's service are also for unlimited periods, or for twelve years, provided the recruit be not less than eighteen years of age.

The advantages of a limited period of service are, that a greater number of recruits are obtained under that condition, probably because men are more willing to engage themselves for a certain number of years than for life; and that, during the period, opportunities are afforded of discovering the character of a man. Should this be such as to render it not advisable to retain him, he may be discharged at the end of his time of service; while an additional bounty, strengthened by the unwillingness of most men to leave the comrades with whom they have been long accustomed to associate, will probably induce a good soldier to re-enlist should the continuance of his services be desired.

By an act passed in 1835 a man is allowed to enlist in the navy for a period not exceeding five years, after which he is entitled to his discharge and to be sent home, if abroad, unless the commanding officer should conceive his departure to be detrimental to the service; such officer is then empowered to detain the man six months longer, or until the emergency shall cease, in which case the man is entitled, during such extra service, to receive an increase of pay amounting to one-fourth of that which he receives according to his rating. At the end of his time of service a seaman may re-enlist for a like period, and he will then be allowed the same bounty as at first. Seamen entering as volunteers within six days after a royal proclamation calling for the services of such men receive double bounty. In the year 1819 was passed that which is called the Foreign Enlistment Act, by which British subjects are forbidden to engage in foreign service without licence from the crown. This act for several years was suspended in favour of the British troops employed in the service of the present Queen of Spain. Lastly, a bill has recently passed,

confirming the act of 55 Geo. III., by which her majesty is empowered to grant the rank of field and general officers to foreigners; and to allow foreigners to enlist and serve as non-commissioned officers and soldiers in the British service in the proportion of one foreigner for every fifty natural born subjects.

ENSIGN, a commissioned officer, the lowest in degree, and immediately subordinate to the lieutenants in a regiment of infantry. One of this rank is appointed to each company, and the junior ensigns are charged with the duty of carrying the colours of the regiment. Ensigns in the regiments of foot guards have also the rank of lieutenants. In the rifle brigade, and in the royal corps of artillery, engineers, and marines, in place of an ensign, a second lieutenant is attached to each company.

Among the Spaniards and Italians, in the seventeenth century, it appears that no officer existed like the lieutenant of a company, whose rank is between that of a captain and ensign, any such being considered superfluous, and as tending to diminish the importance which was attached to the post of the officer who had the charge of the colours, on the preservation of which, in action, the honour of the regiment was made greatly to depend.

When, as formerly, a battle partook far more than at present of the nature of a mêlée, the loss of a standard, which served as a mark for the soldiers under each leader to keep together in the fight, or to rally when dispersed, must have been a serious misfortune, and probably was often attended by the total defeat and destruction of the party; and hence, no doubt, arose the point of honour respecting the colours. A French military author, who served and wrote in the time of Charles IX., intending to express the importance of preserving the colours to the last, observes that, on a defeat taking place, the flag should serve the ensign as a shroud; and instances have occurred of a standard-bearer who, being mortally wounded, tore the flag from its staff and died with it wrapped about his body. Such a circumstance is related of Don Sebastian, king of Portugal, at the battle of Alcazar, and of a young officer named Chatelier at the taking of Taillebourg, during the wars of the Huguenots.

In the ancient French service, the duty of carrying the oriflamme at the head of the army was confided to a man of rank, and also of approved valour and prudence; the post was held for life.

The price of an ensign's commission in the foot guards is 1200*l.*, and his daily pay is 5*s.* 6*d.*; in the regiments of the line the price is 450*l.*, and the daily pay 5*s.* 3*d.*

ENTAIL. [ESTATE.]

ENVOY, a diplomatic minister or agent, inferior in dignity to an ambassador, but generally invested with equal powers. [AMBASSADOR.]

EPISCOPACY. [BISHOP.]

EQUALITY. [LIBERTY.]

EQUERRIES (from the French *écurie*, a stable), the name given to certain officers of the household of the King of England in the department of the master of the horse, the first of whom is styled chief equerry and clerk-marshal. Their duties fall in rotation. When the king or queen ride abroad in state, an equerry goes in the leading coach. They formerly rode on horseback by the coach side. Officers of the same denomination form a part of the established household of the Prince Consort, the Duke of Cambridge, and the Queen Dowager.

EQUITY, according to the definition given by Aristotle, is "the rectification of the law, when, by reason of its universality, it is deficient; for this is the reason that all things are not determined by law, because it is impossible that a law should be enacted concerning some things, so that there is need of a decree or decision; for of the indefinite the rule also is indefinite: as among Lesbian builders the rule is leaden, for the rule is altered to suit the figure of the stone, and is not fixed, and so is a decree or decision to suit the circumstances." (*Ethics*, b. v. c. x. Oxford trans.) "Equity," says Blackstone, "in its true and genuine meaning, is the soul and spirit of all law; positive law is construed and rational law is made by it. In this respect, equity is synonymous with justice; in that, to the true and sound interpretation of the rule."

According to Grotius, equity is the correction of that wherein the law, by reason of its generality, is deficient.

It is probable that the department of law called equity in England once deserved the humorous description given by Selden in his 'Table Talk:' "Equity in law is the same that spirit is in religion, what every one pleases to make it: sometimes they go according to conscience, sometimes according to law, sometimes according to the rule of court. Equity is a roguish thing: for law we have a measure, know what to trust to; equity is according to the conscience of him that is chancellor; and as that is larger or narrower, so is equity. It is all one as if they should make the standard for the measure we call a foot a chancellor's foot; what an uncertain measure would this be! One chancellor has a long foot, another a short foot, a third an indifferent foot: it is the same thing in the chancellor's conscience."

This uncertainty has however long ceased in that branch of our law which is expressed by the term Equity, and, from successive decisions, rules and principles almost as fixed have been framed and established in our courts of equity as in our courts of law. New cases do indeed arise, but they are decided according to these rules and principles, and not according to the notions of the judge as to what may be reasonable or just in the particular case. Nothing in fact is more common than to hear the chancellor say, that whatever may be his own opinion, he is bound by the authorities, that is, by the decisions of his predecessors in office and those of the other judges in equity, that he will not shake any settled rule of equity, it being for the common good that these should be certain and known, however ill-founded the first resolution may have been.

In its enlarged sense, equity answers precisely to the definition of justice, or natural law (as it is called), as given in the 'Pandects' (i. tit. 1, s. 10, 11); and it is remarkable that subsequent writers on this so-called natural law, and also the authors of modern treatises on the doctrine of equity, as administered in the English courts, have, with scarcely any exception, cited the above passage from Aristotle as a definition of equity in our peculiar sense of a separate jurisdiction. But according to this general definition every court is a court of equity, of which a familiar instance occurs in the construction of statutes, which the judges of the courts of common law may, if they please, interpret according to the spirit, or, as it is called, the equity, not the strict letter.

It is hardly possible to define Equity as now administered in England and Ireland, or to make it intelligible otherwise than by a minute enumeration of the matters cognizable in the courts in which it is administered in its restrained and qualified sense.

The remedies for the redress of wrongs and for the enforcement of rights are distinguished into two classes, those which are administered in courts of law, and those which are administered in courts of equity. Accordingly rights may be distributed into Legal and Equitable. Equity jurisdiction may therefore properly be defined as that department of law which is administered by a court of equity as distinguished from a court of law, from which a court of equity differs mainly in the subject matters of which it takes cognizance and in its mode of procedure and remedies.

Courts of common law proceed by certain prescribed forms of action alone, and give relief only according to the kinds of actions, by a general and unqualified judgment for the plaintiff or the defendant. There are many cases, however, in which a simple judgment for either party, without qualifications or conditions, will not do entire justice. Some modifications of the rights of both parties may be required; some restraints on one side or the other, or perhaps on both; some qualifications or conditions present or future, temporary or permanent, ought to be annexed to the exercise of rights or the redress of injuries. To accomplish such objects the courts of law in this country have no machinery: according to their present constitution they can only adjudicate by a simple judgment between the parties. Courts of equity, however, are not so restrained; they adjudicate by decree pronounced upon a statement of his

case by the plaintiff, which he makes by a writing called a bill, and the written answer of the defendant, which is given in upon oath, and the evidence of witnesses, together, if necessary, with the evidence of all parties, also given in writing and upon oath. These decrees are so adjusted as to meet all the exigencies of the case, and they vary, qualify, restrain, and model the remedy so as to suit it to mutual and adverse claims, and the real and substantial rights of all the parties, so far as such rights are acknowledged by the rules of equity.

The courts of equity bring before them *all* the parties interested in the subject matter of the suit, and adjust the rights of all, however numerous; whereas courts of law are compelled by their constitution to limit their inquiry to the litigating parties, although other persons may be interested; that is, they give a complete remedy in damages or otherwise for the particular wrong in question as between the parties to the action, though such remedy is in many cases an incomplete adjudication upon the general rights of the parties to the action, and fails altogether as to other persons, not parties to the action, who yet may be interested in the result or in the subject matter in dispute.

The description of a court of equity, as given by Mr. Justice Story in the 'Encyclopædia Americana,' which he has filled up in his recent Treatise on Equity, is this. A court of equity has jurisdiction in cases where a plain, adequate, and complete remedy cannot be had in the common law courts. The remedy must be plain, for if it be doubtful and obscure at law, equity will assert a jurisdiction. It must be adequate, for if at law it fall short of what the party is entitled to, that founds a jurisdiction in equity; and it must be complete, that is, it must attain the full end and justice of the case; it must reach the whole mischief and secure the whole right of the party present and future, otherwise equity will interpose and give relief. The jurisdiction of a court of equity is sometimes concurrent with the jurisdiction of the courts of law; sometimes assistant to it; and sometimes exclusive. It exercises concurrent jurisdiction in cases where the rights are purely of a legal nature, but where other and more efficient aid is required than a court of law can afford. In some of these cases courts of law formerly refused all redress, but now will grant it. For strict law comprehending established rules, and the jurisdiction of equity being called into action when the purposes of justice rendered an exception to those rules necessary, successive exceptions on the same grounds became the foundation of a general principle, and could no longer be considered as a singular interposition. Thus law and equity are in continual progression, and the former is constantly gaining ground upon the latter. Every new and extraordinary interposition is by length of time converted into an old rule; a great part of what is now strict law was formerly considered as equity, and the equitable decisions of this age will unavoidably be ranked under the strict law of the next. (Prof. Millar, *View of the Eng. Govt.*) But the jurisdiction having been once acquired at a time when there was no such redress at law, it is still retained by the courts of equity.

The most common exercise of the concurrent jurisdiction is in cases of account, accident, dower, fraud, mistake, partnership, and partition. In many cases which fall under these heads, and especially in some cases of fraud, mistake, and accident, courts of law cannot and do not afford any redress: in others they do, but not in so complete a manner as a court of equity.

A court of equity is also assistant to the jurisdiction of the courts of law in cases where the courts of law have no like authority. It will remove legal impediments to the fair decision of a question depending at law, as by restraining a party from improperly setting up, at a trial, some title or claim which would prevent the fair decision of the question in dispute; by compelling him to discover, upon his own oath, facts which are material to the right of the other party, but which a court of law cannot compel him to disclose; by perpetuating, that is, by taking in writing and keeping in its custody, the testimony of witnesses, which is in danger of being lost before the mat-

ter can be tried; and by providing for the safety of property in dispute pending litigation. It will also counteract and control fraudulent judgments, by restraining the parties from insisting upon them.

The exclusive jurisdiction of a court of equity is chiefly exercised in cases of merely equitable rights, that is, such rights as are not recognised in courts of law. Most cases of trust and confidence fall under this head. This exclusive jurisdiction is exercised in granting injunctions to prevent waste or irreparable injury; to secure a settled right, or to prevent vexatious litigation; in appointing receivers of property which is in danger of being misapplied; in compelling the surrender of securities improperly obtained; in preventing a party from leaving the country in order to avoid a suit; in restraining any undue exercise of a legal right; in enforcing specific performance of contracts; in supplying the defective execution of instruments, and reforming, that is, correcting and altering them according to the real intention of the parties, when such intention can be satisfactorily proved; and in granting relief in cases where deeds and securities have been lost.

Various opinions have been expressed upon the question whether it would or would not be best to administer justice altogether in one court or in one class of courts, without any separation or distinction of suits, or of the forms or modes of procedure and relief. Lord Bacon, upon more than one occasion, has expressed his decided opinion that a separation of the administration of equity from that of the common law is wise and convenient. "All nations," says he, "have equity, but some have law and equity mixed in the same court, which is worse, and some have it distinguished in several courts, which is better;" and again, "In some states, that jurisdiction which decrees according to equity and moral right, and that which decrees according to strict right, is committed to the same court; in others, they are committed to different courts. We entirely opine for the separation of the courts; for the distinction of the cases will not long be attended to if the jurisdictions meet in the same person; and the will of the judge will then master the law."

Lord Hardwicke held the same opinion. Lord Mansfield, it is to be presumed, thought otherwise, for he endeavoured to introduce equitable doctrines into the courts of law. The old strictness has however been restored. His successor, Lord Kenyon, made use of these expressions: "If it had fallen to my lot to form a system of jurisprudence, whether or not I should have thought it advisable to establish different courts, with different jurisdictions, and governed by different rules, it is not necessary to say; but influenced as I am by certain prejudices that have become inveterate with those who comply with the systems they find established, I find that in these courts, proceeding by different rules, a certain combined system of jurisprudence has been framed most beneficial to the people of this country, and which I hope I may be indulged in supposing has never yet been equalled in any other country on earth. Our courts of law only consider legal rights; our courts of equity have other rules, by which they sometimes supersede strict legal rules, and in so doing they act most beneficially for the subject." In this country the principle of separating jurisdictions has been largely acted upon. We have our courts of equity and law; our bankrupt and insolvent courts, and courts of ecclesiastical and admiralty jurisdiction; indeed until lately our several courts of law had, in principle, jurisdiction only over certain specified classes of suits. In countries governed by the civil law, the practice has in general been the other way. But whether the one opinion or the other be most correct in theory, the system adopted by every nation has been mainly influenced by the peculiarities of its own institutions, habits, and circumstances, and the original forms of giving redress for wrongs.

In some of the American states, the administration of law and equity is distinct; in others the administration of equity is only partially committed to distinct courts; in a third class the two jurisdictions are vested in one and the

same tribunal; and in a fourth there are no courts that exercise equitable jurisdiction.

In most of our colonies the governor is invested with the jurisdiction of chancellor; but in some of the most important colonies, where a judicial establishment of some magnitude is maintained, the chief or supreme court is invested with the chancery jurisdiction.

This attempt at the exposition of the general principles of what in this country is called Equity, seems to be better suited to a work of this nature than a full description of the practice of, that is, the course of proceeding in a suit in a court of equity. The practice or procedure of any court can hardly be made intelligible to any person except one who knows something of it by experience; and any technical description of it is useless unless it is minutely and circumstantially exact. It is desirable, however, that in addition to some knowledge of the subjects which belong to the jurisdiction of a court of equity, all persons should have some clear notion of the way in which the matters in dispute between parties to a suit in equity are brought before the court, and by what kind of proof or evidence they are established. It may also be useful that persons should have a general and, so far as it goes, a correct knowledge of the different modes in which such questions of fact are put in issue, and proved in our courts of law and equity. The following short outline of the course of proceeding in a suit of chancery, taken in connection with other articles in this work, such as CHANCELLOR, CHANCERY, DEPOSITION, and EVIDENCE, may probably give somewhat more information on the subject of equity jurisdiction that is found in books not strictly professional.

A suit on the Equity side of the courts of chancery is commenced by presenting a written petition to the lord chancellor, containing a statement of the plaintiff's case, and praying for such relief as he may consider himself entitled to receive. This petition is technically called a Bill, and is in the nature of the Declaration at common law; but if the suit is instituted in behalf of the crown, or a charity, or any of the objects under the peculiar protection of the crown, the petition is in the form of a narrative of the facts by the attorney-general, and is called an Information. There is also a petition termed an information and bill, which is, where the attorney-general, at the relation (that is, the information) of a third person (thence called the relator), informs the court of the facts which he thinks are a fit subject of inquiry. The practice in all these proceedings is the same. At the end of the statement in a bill, there is added what is called the interrogating part, which consists of the statements of the bill thrown into the form of distinct questions, and often expressed in terms of great length and particularity. The statements in the bill are not made upon oath: and further, in order to obtain a full and complete discovery from the defendant, both as regards the complaint and the supposed defence, various allegations are made in many cases from mere conjecture, a practice which tends to the due administration of justice; for though many frivolous suits are instituted, yet, from the nature of cases of fraud and concealment, the plaintiff is often ignorant of the precise nature of his own case, and frames his bill in various forms so as to elicit from the defendant a full discovery of the truth. Bills of this nature are called original bills, and either may be for Discovery and Relief, or for Discovery merely.

When the bill is placed on the records of the court it is said to be *filed*, and the writ of subpœna issues which commands the defendant to appear and answer the allegations of the bill within a certain time.

If, upon the face of the bill, it should appear that the plaintiff is not entitled to the relief prayed for as against the defendant, the defendant may demur, that is, demand the judgment of the court upon the statement made by the plaintiff, whether the suit shall proceed; and if any cause, not apparent upon the bill, should exist why the suit should be either dismissed, delayed, or barred, the defendant may put in a plea, stating such matter, and demanding the judgment of the court as in the case of a demurrer. But if

neither of these modes of defence are applicable, and the defendant cannot disclaim all knowledge of the matters contained in the bill, he must answer upon oath the interrogatories in the bill according to the best of his *knowledge, remembrance, information,* and *belief.* This mode of defence is styled an Answer. All or any of these several modes of defence may be used together, if applied to separate and distinct parts of the case made by the plaintiff.

In the successive stages of a suit, references as to the pleadings, and as to facts, may be made to the Masters of the court of Chancery: as for instance, if any improper statements be made reflecting upon the character of any party, which are not necessary to the decision of the suit, the pleadings may be referred to the master for scandal; if there be long and irrelevant statements, not concerning the matter in question, a reference may be made for impertinence, and the matter so complained of as scandalous or impertinent may be expunged at the expense of the party in fault. Again, if the defendant does not answer the bill with sufficient precision, the plaintiff may except to the answer for insufficiency, and this question is decided by the masters in Chancery. If the answer is decided to be insufficient, the defendant must answer further.

It frequently happens that during the progress of the suit, from the discovery of new matter, the deaths and marriages of parties, and other causes, the pleadings become defective, and in these cases it is necessary to bring the new matter, or parties becoming interested, before the court. This is done by means of further statements, which refer to the previous proceedings, and are in fact merely a continuation of them, which are called supplemental bills, bills of revivor, or bills of revivor and supplement, according to the nature of the defect which they are intended to supply. These bills are called bills not original.

There is also a third class, called bills in the nature of original bills, which are occasioned by former bills, such as cross bills, which are filed by the defendant to an original bill against the plaintiff who files such bill, touching some matter in litigation in the original bill, as where a discovery is necessary from the plaintiff in order that the defendant may obtain complete justice. There are also bills of review, to examine a decree upon the discovery of new matter, &c., and several others. Upon both these latter descriptions of bills the same pleadings and proceedings may follow as to an original bill.

Pleas and demurrers are at once argued before the court: if allowed, the suit, or so much of it as is covered by the demurrer or plea, is at an end, though the court will generally permit the plaintiff to amend his bill where it is not apparent from his own statement that he cannot make any case against the defendant; otherwise the only object attained by the demurrer or plea would be to drive the plaintiff to file a new bill, in which he would omit or amend the objectionable part. But if the demurrer or plea is overruled, the defendant is compelled to answer fully, just as if he had not demurred or pleaded. When the answer is filed, the plaintiff, if from the disclosures made he deems it advisable, may amend his bill, that is, erase such part of his statements as he no longer considers necessary, and insert other statements which may appear necessary to sustain his case; and the defendant must answer to this new matter.

In cases where the bill is for discovery only, and in some others, the answer puts an end to the suit; and when the object of the bill is to obtain an injunction, which is granted either upon affidavits before answer or in default of an answer, the suit is also ended, unless the defendant desires to dissolve the injunction. But where a decree is necessary, the cause must come on to be heard either upon evidence taken in writing before the examiners of the court or commissioners appointed for the purpose [DEPOSITION; EVIDENCE]; or where the plaintiff considers the disclosures in the answer sufficient, the cause is heard upon bill and answer alone, without further evidence, and this is at the plaintiff's discretion.

The cause is heard in its turn by the master of the rolls or the vice-chancellors, for the lord chancellor rarely hears causes

in the first instance. [CHANCERY.] If the nature of the suit admits, a final decree is made; or if any further inquiry be necessary, or any accounts are to be taken, references are made to a master in Chancery for those purposes.

The master, being attended by the parties or their agents, makes his report; and the cause again comes on in its turn to be heard upon further directions (as it is called), when the like practice prevails as at the hearing.

This is the form of the simplest suit in equity, and is sufficient to point out the successive steps necessary to be taken; but generally suits are of a far more complicated character. Many special applications to the court may become necessary at various stages before the cause is ready for hearing; and when reference is made to the master, the inquiries to be prosecuted before him may be entangled in the greatest confusion; and even when he has made his report, either party may except to it, and have his exceptions argued before the court. Also when the cause is heard on further directions, that is, further instructions given by the court to the master to whom the cause has been already referred, other references to the master may be found to be necessary, or may arise out of the circumstances stated in his report; the subject matter of the suit may be such as to prevent an immediate and final decree; a party may be entitled for life to the interest of money, and the persons to take after him may not be born or may be infants. In these and many other cases the court makes such decree as may be necessary, and retains the suit, giving liberty to any parties interested to apply to the court for directions as may become necessary from time to time. It is impossible here to give an adequate notion of the various and complicated operations performed by decrees, by which the interests and rights of all parties are settled, and the most embarrassed affairs are arranged. A very valuable collection of decrees has been published by Mr. Seton.

Those who wish for a more accurate knowledge of the proceedings in a suit in Chancery may consult Lord Redesdale's *Treatise on Pleading;* Beames *On Pleas;* and the various books on Chancery Practice.

The principal English treatises on Equity are those of Mr. Maddock and Mr. Fonblanque: the former treats of his subject under heads devoted to the several subject matters cognizable in courts of equity; the latter considers it with reference to the jurisdiction exercised by courts of law, as concurrent, assistant, exclusive. The American treatise of Mr. Justice Story unites these two modes.

The English Equity has some resemblance to the Roman Edictal Law, or Jus Prætorium or Honorarium, as it is often called. All the higher Roman magistrates (magistratus majores) had the Jus Edicendi or authority to promulgate Edicta. These magistratus majores were Consuls, Praetors, Curule Aediles, and Censors. By virtue of this power a Magistrate made Edicta or orders, either temporary and for particular occasions (edicta repentina); or upon entering on his office he promulgated rules or orders, which he would observe in the exercise of his office (edicta perpetua). These Edicta were written on a white tablet (album) in black letters; the headings or titles were in red: the Alba were placed in the Forum, in such a position that they could be read by a stander-by. Those Edicta which related to the administration of justice had an important effect on the Roman law; and especially the Praetoria Edicta and those of the Curule Aediles. That branch of law which was founded on the Praetorian Edicta was designated Jus Praetorium, or Honorarium, because the Praetor held one of these offices to which the term Honores was applied. The Edicta were only in force during the term of office of the Magistratus who promulgated them; but his successor adopted many or all of his predecessor's Edicta, and hence arose the expression of "transferred edicts" (tralaticia edicta); and thus in the later Republic the Edicta which had been long established began to exercise a great influence on the law, and particularly the forms of procedure. About the time of Cicero many distinguished jurists began to write treatises on the Edictum (libri ad edictum). Under the Emperors new Edicta were rarer, and

in the third century of our aera they ceased. Under the Empire we first find the Edicta of the Praefectus Urbi mentioned; but these must be considered as founded on the Imperial authority (majestas principis), and to have resembled the Imperial Constitutions. Under the reign of Hadrian, a compilation was made by his authority of the Edictal rules by the distinguished jurist Salvius Julianus, in conjunction with Servius Cornelius, which is spoken of under the name of Edictum perpetuum. This Edictum was arranged under various heads or titles, such as those relating to Marriage, Tutores, Legata (legacies), and so on.

By the term Praetorian Edict the Romans meant the Edicts of the Praetor Urbanus, who was the chief personage employed in the higher administration of justice under the Republic. The Edicta which related to Peregrini (aliens) were so named after the Praetor Peregrinus; and other edicta were called Censoria, Consularia, Aedilicia, and so on. Sometimes an Edict of importance took its name from the Praetor who promulgated it, as Carbonianum Edictum. Sometimes the Honorariae actiones, those which the Praetor by his Edict permitted, were named in like manner from the Praetor who introduced them. Sometimes an Edict had its name from the matter to which it referred. The Romans generally cited the Edicta by parts, titles, chapters, or clauses of the Edictum Perpetuum by naming the initial words, as Unde Legitimi, and so on; sometimes they are cited by a reference to their contents. Examples of these modes of citing the Edictum occur in the titles of the forty-third book of the 'Digest.' (See the title 'Quorum Bonorum.') In our own law we refer to certain forms of proceedings and to certain actions in a like way, as when we say Quo Warranto, Quare Impedit, and speak of Qui tam actions.

The Jus Praetorium is defined by Papinian (*Dig.* i., tit. i. 7) as the law which the Praetors introduced for the purpose of aiding, supplying, or correcting the law (jus civile), with a view to the public interest. The edict is called by Marcianus "the living voice of the jus civile," that is, of the Roman law. (*Dig.* i., tit. i. 8.) The Praetorian Law, as thus formed, (Jus Praetorium) was a body of law which was distinguished by this name from the Jus Civile, or the strict law; the opposition resembled that of the English terms Equity and Law. In its complete and large sense Jus Civile Romanorum, or the Law of the Romans, of course comprehended the Jus Praetorium; but in its narrower sense Jus Civile was contrasted, as already explained, with the Jus Praetorium.

The origin of the Roman edictal Law is plainly to be traced to the imperfections of the old Jus Civile, and to the necessity of gradually modifying law and procedure according to the changing circumstances of the times. It was an easier method of doing this than by direct legislation. Numerous modern treatises contain a view of the origin and nature of the Roman Jus Praetorium, though on some points there is not complete uniformity of opinion.

(Böcking, *Institutionen*, vol. i.; Puchta, *Cursus der Institutionen*, vol. i. p. 293; Savigny, *Geschichte des Röm. Rechts*, vol. i.; Heffter, *Die Oeconomie des Edictes*, *Rhein. Mus. für Juris.* i. p. 51; E. Schrader, *Die Prätorischen Edicte der Römer*, 1815.)

ESCHEAT is from the Norman French *eschet*, which is from the word *eschier* or *eschoir*, 'to fall;' for an escheat is a casual profit, which comes to the lord of a fee.

An escheat may happen in two ways, as it is stated by the old law writers, *Per defectum sanguins*, for want of heirs, or *Per delictum tenentis*, for the crime of the tenant. There can only be an escheat of the whole fee; and this happens when the tenant of lands in fee simple dies intestate and without an heir: the lands, if freehold, escheat to the king, or other lord of the fee; if copyhold, to the lord of the manor. All such lands therefore either escheat to the king as the supreme lord, or to the intermediate lord, if there is one. Lands which have descended to the last tenant from a paternal or maternal ancestor, escheat, if there are no heirs on the part of that ancestor from whom the lands descended.

Since the 1st day of January, 1834, there can be no escheat on failure of the whole blood, wherever there are persons of the half-blood capable of inheriting under 3 & 4 Wm. IV. c. 106, § 9.

If a bastard dies intestate and without issue, his lands escheat to the lord of whom they are held [BASTARD, p. 330]. Escheats propter delictum may happen in consequence of a man being attainted for treason or felony, by which he becomes incapable of inheriting from any of his next of kin, or transmitting an inheritance to them. This is the consequence of Attainder and the legal corruption of blood. The 3 & 4 Wm. IV. c. 106, § 10, which is referred to under ATTAINDER, somewhat modifies the old law, so as to prevent escheat in some cases.

By the 4 & 5 Wm. IV. c. 23, no property vested in any trustee or mortgagee shall escheat or be forfeited by reason of the attainder or conviction for any offence of such trustee or mortgagee, except so far as such trustee or mortgagee may have a beneficial interest in the property.

In 1838 an act was passed (1 & 2 Vict. c. 69) for removing doubts which had arisen respecting the acts 1 Wm. IV. c. 60, and 4 Wm. IV. c. 23, with reference to mortgagees; and it enacts that these acts shall extend only to cases where any person seised of any land by way of mortgage shall have died without having been in possession of such land, or in receipt of the rents and profits, and the money due thereon shall have been paid to his executor, and the devisee or heir of such mortgagee shall be out of the jurisdiction of the Court of Chancery, or it shall be uncertain whether he be living or dead, or who are his heirs; or when such mortgagee, or devisee, or heir shall have died without an heir, or such devisee, &c., neglect or refuse to convey for twenty-eight days after tender of a deed. In any of these cases the court may direct any person to convey such land as directed by 1 Wm. IV. c. 60.

The words Escheat and Forfeiture are carelessly used even by law writers. Escheat arises solely because there are no heirs to take the land, for one or the other of the two reasons stated above. Forfeiture is a direct consequence of an illegal act: it is a punishment of feudal origin inflicted on a tenant who breaks his fealty (fidelity) to his lord.

The doctrine of escheat seems to have been adopted in every civilized country to avoid the confusion which would otherwise arise from the circumstance of any property becoming common; and the sovereign power, or those who claim under it, are consequently the ultimate heirs to every inheritance to which no other title can be found.

ESCUAGE. [FEUDAL SYSTEM.]

ESQUIRE (from the French *écuier*, or shield-bearer) is the next title or dignity to that of knight. The esquire was the second in rank of the aspirants to chivalry, or knighthood, and had his name from carrying the shield of the knight, whose bachelor, or apprentice in arms, he was. The gradations of this service, or apprenticeship to arms, were page, esquire or bachelor, and knight, who, in his turn, after the formation of degrees of knighthood, was called a knight bachelor, as aspiring to the higher honours of chivalry. The esquire was a gentleman, and had the right of bearing arms on his escutcheon or shield: he had also the right of bearing a sword, which denoted nobility or chivalry, though it was not girded by the knightly belt; he had also a particular species of defensive armour which was distinguished from the full panoply of the knight. This is the esquire of chivalry, which order is only preserved in the almost obsolete esquires for the king's body, whom antiquaries have pronounced to be the king's esquires in chivalry (that is, his esquires, as being a knight), and in the esquires of knights of the Bath.

There was also another class, who may be called feudal esquires, and consisted of those tenants by knight's service who had a right to claim knighthood, but had never been dubbed. They were in Germany called *ritters*, or knights, but were distinguished from the actual knights, who were called dubbed knights, or *Ritter Geschlagen*, and had many of the privileges of knighthood. This distinction still exists in many of the countries which formed part of the German empire. In Hainault, Brabant, and other

provinces of what was Austrian Flanders, the antient untitled nobility, or gentry as they are called in England, to this day are styled collectively the *Ordre Equestre*, or knightly order. It also existed in England until James the First had prostituted the honour of knighthood, for Camden frequently speaks of knightly families (*familias equestres*, or *familias ordinis equestris*), where the heads of them were not, at the time, actual knights. Writers on precedence make mention of esquires by creation, with investiture of a silver collar or chain of *ss*, and silver spurs: but these seem to have been only the insignia of the esquires for the king's body, which being preserved in a family as heir-looms, descended with the title of esquire to the eldest sons in succession. The sons of younger sons of dukes and marquesses, the younger sons of earls, viscounts, and barons, and their eldest sons, with the eldest sons of baronets, and of knights of all the orders, are all said to be esquires by birth, though their precedence, which differs widely, is regulated by the rank of their respective ancestors. Officers of the king's court and household, and of his navy and army, down to the captain inclusive, doctors of law, barristers, and physicians, are reputed esquires. A justice of the peace is only an esquire during the time that he is in the commission of the peace, but a sheriff of a county is an esquire for life. The general assumption of this title by those who are not, in strictness, entitled to it, has virtually destroyed it as a distinct title or dignity. It is now usual to address most people as esquires on the outside of a letter; but even in this practice and other cases, the title is not generally given to inferior tradesmen and shopkeepers. The heads of many old families are, however, still deemed esquires by prescription.

ESTABLISHED CHURCH. United Church of England and Ireland. [SCOTLAND, CHURCH OF.] The history of the Protestant Episcopal Church in England, now called the United Church of England and Ireland, commences in the reign of Henry VIII., when that king abjured the ecclesiastical supremacy of the Pope and declared himself head of the church. [SUPREMACY.] The object of this notice is to show the nature of the connexion which exists between the united church of England and Ireland and the state.

Whoever shall come to the possession of the crown of England shall join in communion with the church of England as by law established. (12 & 13 Wm. III., c. 2, § 3.) The Regency act, 3 & 4 Vict. c. 52, which appoints Prince Albert Regent of the United Kingdom in case of Her Majesty dying before her next lineal successor is eighteen years of age, provides that in case of his marrying a Roman Catholic the guardianship of the heir to the crown and regency should thenceforth cease.

At the coronation of the king or queen regnant of England, one of the archbishops or bishops is required by 1 Wm. III., c. 6, to administer an oath, that they will, to the utmost of their power, maintain the Protestant reformed church established by law, and will preserve unto the bishops and clergy of this realm, and to the churches committed to their charge, all such rights and privileges as by law do or shall appertain unto them or any of them. By 5 Anne c. 5, § 2, the king at his coronation is required to take and subscribe an oath to maintain and preserve inviolably the settlement of the church of England, and the doctrine, worship, discipline, and government thereof, as by law established.

The religious tenets of the United Church of England and Ireland, are contained in the Thirty-nine Articles; and the services of the church [FRANKALMOIGNE] are set forth in the Book of Common Prayer. The Thirty-nine Articles and the Rubric of the Book of Common Prayer, "being both of them established by act of parliament, are to be esteemed as part of the statute law." (Burn, Preface, *Ecc. Law.*) Articles of Religion were published by order of Henry VIII. in 1536. In 1552, Edward VI. promulgated Forty-two Articles which had been drawn up and signed by the Convocation. These Articles were set aside in the reign of Queen Mary. In 1562 Queen Elizabeth confirmed the Thirty-nine Articles which had been agreed upon by the Convocation.

They were published in Latin, but when they were revised in 1571 the Convocation signed an English as well as the Latin copy.

The act 13 Eliz. c. 12, requires that all persons who are admitted to holy orders, shall subscribe the Thirty-nine Articles.

The Thirty-nine Articles include some which are of a political character, or relate to the government of the Established Church. Article 39 recognizes the Queen's supremacy as head of the Church. Article 37 asserts the power of the Church to decree rites and ceremonies.

The promulgation of the Thirty-nine articles by Queen Elizabeth was accompanied by a 'Declaration' which set forth Her Majesty's powers as head of the Church, and defined the powers of the clergy in Convocation. The Queen declared herself "the supreme governor of the Church; and that if any difference arise about the external policy, concerning the injunctions, canons, and other constitutions whatsoever thereto belonging, the clergy in their Convocation is to order and settle them, having first obtained leave under our broad seal so to do; and we approving their said ordinances and constitutions, providing that none be made contrary to the laws and customs of the land." In like manner the clergy in convocation might settle matters of doctrine and discipline, which were, however, only to be authoritative after the queen had given her assent; and this being done, the declaration says: "we will not endure any varying or departing in the least degree." It is declared of the articles that "no man hereafter shall either print, or preach, to draw the article aside any way, but shall submit to it in the plain and full meaning thereof; and shall not put his own sense or comment to be the meaning of the article, but shall take it in the literal and grammatical sense;" also "That if any public reader in either of our Universities, or any head or master of a college, or any other person respectively in either of them, shall affix any new sense to any article, or shall publicly read, determine, or hold any public disputation, or suffer any such to be held either way, in either the Universities or colleges respectively; or if any divine in the Universities shall preach or print anything either way, other than is already established in convocation with our royal assent, he or they, the offenders, shall be liable to our displeasure and the church's censure in our commission ecclesiastical, as well as any other; and we shall see there be due execution upon them."

The Constitutions and Canons Ecclesiastical were framed by the Convocation of the province of Canterbury in 1603, and assented to by King James (who confirmed them for the province of York also). These Canons maintain the king's supremacy over the Church of England, and subject to the punishment of excommunication whoever shall affirm the following things: "That the Church of England, by law established under the King's Majesty, is not a true and apostolical church, teaching and maintaining the doctrine of the apostles" (Canon 3). "That the form of God's worship in the Church of England, established by law, and contained in the Book of Common Prayer and Administration of Sacraments, is a corrupt, superstitious or unlawful worship of God, or containeth anything that is repugnant to the Scriptures" (Canon 4). "That any of the Thirty-nine Articles are in any part superstitious or erroneous, or such as he may not with a good conscience subscribe to" (Canon 5). "That the rites and ceremonies of the Church of England are wicked, anti-christian or superstitious, or such as being commanded by lawful authority, men who are zealously and godly affected, may not with any good conscience approve them, use them, or as occasion requireth, subscribe unto them" (Canon 6). "That the government of the Church of England under his Majesty by archbishops, bishops, deans, archdeacons and the rest that bear office in the same, is anti-christian or repugnant to the word of God" (Canon 7). "That the form and manner of consecrating and ordering archbishops, bishops, &c., containeth anything in it that is repugnant to the word of God; or that they who are thus made are not truly either bishops, priests, &c., 'until they have some other calling to

those divine offices.'" Schismatics were directed by the canons to be excommunicated. [NONCONFORMISTS.]

The reign of Queen Elizabeth is a most important period in the history of the Established Church. On the queen's accession an act was passed (stat. 1, Eliz. c. 1), which conferred on her the supremacy over the church as fully as it had been enjoyed by Henry VIII. and Edward VI. There is a clause in this act which empowered the queen to name and authorise by letters patent, as often as she shall think meet, for such time as she shall please, such person or persons, being natural born subjects, as she shall think fit, to execute all jurisdiction concerning spiritual matters within the realm, and to visit, reform, redress, order, correct, and amend all errors, heresies, schisms, abuses, offences, contempts, and enormities whatsoever, which by any ecclesiastical authority might be lawfully ordered or corrected. This was the origin of the Court of High Commission, which exercised a sort of jurisdiction equivalent to that of the Inquisition or Holy Office in some other countries. One of the clauses for regulating the proceedings of this court, authorised the commissioners to make inquiry by juries and witnesses, "and all other means and ways which they could devise, which seems," observes Reeves (*Hist. English Law*), "to authorise every inquisitorial power—the rack, the torture, and imprisonment." By the same act the oath of supremacy was directed to be taken by all persons holding any office, spiritual or temporal, on pain of deprivation, and also by all persons taking degrees in the Universities, and by all persons wearing livery or doing homage: writing or preaching against the queen's supremacy was made punishable for the first offence with forfeiture of goods and one year's imprisonment, for the second with the pains of præmunire, for the third as high treason. In 1563, by an act (5 Eliz. c. 1) "For the assurance of the Queen's Majesty's royal power over all estates and subjects within her highness's dominions," the oath of supremacy was required also to be taken by all persons taking holy orders, by all schoolmasters, barristers, teachers, and attorneys, by all officers of any court of common law or other court whatever, and by all members of the House of Commons; and the refusing it, or upholding the jurisdiction of Rome, was made punishable with the pains of præmunire for the first offence, and for the second with those of high treason. The penal enactments against the Roman Catholics in this and other reigns are noticed under the head ROMAN CATHOLICS.

Another act (1 Eliz. c. 2) was passed on the accession of Elizabeth, entitled "An Act for the Uniformity of Common Prayer and Divine Service in the Church, and the Administration of the Sacraments." By this act, clergymen who refused to use King Edward's Book of Common Prayer were ordered to be punished, for the first offence, with forfeiture of one year's profit of their benefices and six months' imprisonment; for the second, with one year's imprisonment and deprivation; for the third, with deprivation and imprisonment for life: all persons, either speaking anything against the said service-book, or causing any other forms than those it prescribed to be used in any church or other place, in the performance of prayer or the administration of the sacraments, were subjected to a fine of 100 marks, and for the third offence to forfeiture of goods and imprisonment for life.

The course of legislation throughout the whole of Elizabeth's reign was designed to enforce religious uniformity, and it was consistent with this idea to punish nonconformity with various pains and penalties. These are specifically noticed under NONCONFORMISTS and ROMAN CATHOLICS. The same policy was pursued in the succeeding reign. Penal enactments were multiplied; but they only hastened a crisis in which the fabric and polity of the Established Church were overthrown.

The disputes between King Charles I. and the parliament, which resulted in a civil war, brought on the overthrow of the Established Church, which occurred several years before Charles was beheaded, A.D. 1649. The Court of High Commission was abolished by statute (16

Car. I. c. 11), A.D. 1641. In 1642 bishops were deprived of their seats in parliament, and their lands were subsequently seized for the expenses of the civil war. Parliament passed numerous ordinances by which many hundreds of clergymen were turned out of their livings. The cathedral service was everywhere put down, and the clergy were left to read the Liturgy or not, as they pleased, and to take their own way in other things. Marriage was made a civil rite, and was performed by justices of the peace. In 1643 the Assembly of Divines was called together by an order of the two Houses of Parliament, to give their advice respecting a new system of ecclesiastical polity. [WESTMINSTER ASSEMBLY OF DIVINES.] The majority of the assembly were Presbyterians; and, in place of the suppressed Liturgy, they formed a Directory of Public Worship, which was established by an ordinance of the parliament on the 3rd of February, 1645. The assembly also laid down a Confession of Faith, which comprehended a Presbyterian form of ecclesiastical polity, and was at once received by the Scottish Church; but it was never distinctly sanctioned by the English legislature. On the 6th of June, 1646, an act was passed which partially established the Presbyterian form of church government in England; but this was confessedly done by way of experiment, as the preamble of the act expressly declares, "that if upon trial it was not found acceptable it should be reversed or amended;" and to this law a further effect was afterwards given by several additional ordinances of the House of Commons; till at last, in 1649, it was declared, without qualification, by the House, that Presbyterianism should be the established religion. The Presbyterian form of church government, however, never obtained more than a limited and imperfect establishment. The clergy were not exclusively Presbyterians: some benefices were retained by their old Episcopalian incumbents; a few were held by Independents; and some by persons belonging to the minor sects, which increased so abundantly at this time. At last, in March, 1653, Cromwell, by an ordinance of council, appointed a Board of Triers, as they were termed, in all thirty-eight in number, of whom part were Presbyterians, part Independents, and a few Baptists, to which was given, without any instructions or limitations whatever, the power of examining, approving, or rejecting all persons that might thereafter be presented, nominated, chosen, or appointed to any living in the church. This was tantamount to dividing the church livings amongst these different religious bodies; but the measure was designed by Cromwell to restrain the excessive liberty that had previously existed, when any one who chose might set up as a preacher, and so give himself a chance of obtaining a living in the church. The Board of Triers continued to sit and to exercise its functions at Whitehall, till a short time after the death of Cromwell.

As soon as the Restoration of Charles II. was effected in 1660, the work of reconstructing the Established Church was commenced. The convention parliament passed an act (12 Car. II. c. 17) "for the confirming and restoring of ministers;" and the next parliament, which met in May, 1661, repealed the act which disabled persons in holy orders from exercising any temporal jurisdiction or authority, the effect of which was to restore the bishops to their seats in the Upper House.

The Book of Common Prayer, which had been revised by a commission appointed by Charles II. after his restoration, was unanimously adopted by both houses of convocation, and having been approved of by the king, was transmitted to the House of Peers on the 24th of February, 1662, with a message from his majesty, recommending that the book so altered should be that "which in and by the intended Act of Uniformity shall be appointed to be used by all that officiate in all cathedrals and collegiate churches and chapels, and in all parish churches of England and Wales, under such sanctions and penalties as the parliament shall think fit." The act here alluded to received the royal assent on the 19th of May (14 Car. II. c. 4), and was entitled "An Act for the Uniformity of Public Prayers and Administration of Sacra-

ments, and other Rites and Ceremonies, and for establishing the form of making, ordaining, and consecrating Bishops, Priests, and Deacons, in the Church of England." It provided that all ministers should henceforth use the amended Book of Common Prayer, and that all persons who enjoyed any ecclesiastical benefice or promotion should publicly declare their assent to the use of the same, and their approval of everything contained in it: and, besides the oath of canonical obedience, the terms of conformity were now made to include the abjuration both of the solemn league and covenant, and of the lawfulness of taking up arms against the king, or any commissioned by him, on any pretence whatsoever.

During the reign of Charles II. many acts were passed for the punishment of persons who did not conform to the Established Church. Some of them were even more severe than those passed in the reigns of Elizabeth and James I. [NONCONFORMISTS.]

William III. was more tolerant than most of his subjects, and soon after his accession he proposed a repeal of the Test Act, the statute most obnoxious to the Nonconformists; but the House of Lords rejected a motion to this effect. Eventually, however, an act was passed (1 Wm. III. c. 18) which mitigated the enactments against all sects except the Roman Catholics. We must again refer to the article NONCONFORMISTS, for a brief notice of the Toleration Act, and some other statutes of a like character. Between this act of Wm. III. and the reign of Geo. IV. little was done to relieve Nonconformists or Roman Catholics from any of the penalties against those who did not conform to the doctrines and discipline of the Protestant Established Church of England and Ireland.

In 1828 an act was passed (9 Geo. IV. c. 17) "for repealing so much of several acts as imposes the necessity of receiving the sacrament of the Lord's Supper, as a qualification for certain offices and employments." This act, which repeals the Test Act, provides another security in lieu of the tests repealed: "And whereas the Protestant Episcopal Church of England and Ireland, and the Protestant Presbyterian Church of Scotland, and the doctrine, discipline, and government thereof respectively, are by the laws of this realm severally established, permanently and inviolably: and whereas it is just and fitting, that on the repeal of such parts of the said acts as impose the necessity of taking the sacrament of the Lord's Supper, according to the rite or usage of the Church of England, as a qualification for office, a declaration to the following effect should be substituted in lieu thereof, it is therefore enacted, that every person who shall hereafter be placed, elected, or chosen in or to the office of mayor, alderman, recorder, bailiff, town clerk, or common councilman, or in or to any office of magistracy, or place, trust, or employment relating to the government of any city, corporation, borough, or cinque port within England and Wales, or the town of Berwick-upon-Tweed, shall within one calendar month next before or upon his admission into any of the aforesaid offices or trusts, make and subscribe the declaration following:—'I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, upon the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess, by virtue of the office ————, to injure or weaken the Protestant Church as it is by law established in England, or to disturb the said church, or the bishops and clergy of the said church, in the possession of any rights or privileges to which such church, or the said bishops and clergy, are or may be by law entitled.'" The 7th section of the act provides that no naval officer below the rank of rear-admiral, and no military officer below the rank of major-general in the army, or colonel in the militia, shall be required to make or subscribe the above declaration; and no commissioner of customs, excise, stamps, and taxes, or any person holding any of the offices concerned in the collection, management, or receipt of the revenues which are subject to the said commissioners, or any persons subject to the authority of the postmaster-general, shall be required to make or describe such declaration.

In 1829, when the Roman Catholic Relief Act (10 Geo. IV. c. 7) was passed, a provision was made for the security of the Established Church; and the oath to be taken by Roman Catholic peers on taking their seat in the House of Lords, and Roman Catholic persons upon taking their seat as members of the House of Commons, contains the following pledge, which is sworn to "on the true faith of a Christian:" "I do hereby disclaim, disavow, and solemnly abjure any intention to subvert the present Church Establishment as settled by law within this realm."

Other acts have also been passed which have further departed from the old principle of requiring uniformity of religious faith. The act 6 & 7 Wm. IV. c. 85, enables persons to be married according to the rites of their own sect, instead of those of the Established Church only; and the same act permits the marriage contract to be made by a merely civil ceremony, in which respect the law now resembles in effect that which was established during the Commonwealth. In the act 3 & 4 Vict. c. 72, which is an act relating to marriages, the recent acts on the same subject are alluded as being framed with the view of enabling marriage to be "solemnized according to the form, rite, or ceremony the parties see fit to adopt." The act for the registration of births, marriages, and deaths renders baptism unnecessary for civil purposes, and establishes a lay department for the registration of births, marriages, and deaths. The act 3 & 4 Vict. c. 92, enabled courts of justice to admit non-parochial registers as evidence of births or baptisms, deaths or burials, and marriages. In England the chaplains of gaols must be clergymen of the Church of England, but in Ireland there may be appointed for each union workhouse three chaplains, one Roman Catholic, one of the Established Church, and one Protestant dissenter.

Rates are levied in England and Wales called CHURCH RATES, which Nonconformists are required to pay as well as churchmen. In Ireland the churches are kept in repair out of funds in the hands of the Ecclesiastical Commissioners, which are derived from extinguished sees and other sources.

The principle of the state maintaining an exclusive system of education in accordance with the principles and doctrines of the Established Church has been partially abandoned both in England and Ireland. The parliamentary grants for education are enjoyed by dissenters as well as churchmen. In Ireland the state supports schools which are established on the plan of not permitting the inculcation of the peculiar doctrines of any religious body as a part of the regular course of teaching, but religious instruction is given by the ministers of different religious bodies to the scholars of each denomination separately. In the government plan for founding provincial colleges in Ireland the same principle has been adopted. Lastly, parliament has annually voted funds for the maintenance of an institution (Maynooth) for the education of Roman Catholic priests; and in 1845 this annual vote was converted into a fixed annual payment.

The King and Queen of England must be members of the Established Church, and may not marry a Roman Catholic; but the only other offices from which Roman Catholics are now excluded are the offices of guardians and justices of the United Kingdom, or Regent of the same, the office of Lord High Chancellor of Great Britain or Ireland, the Lord Lieutenant of Ireland, and the office of High Commissioner to the General Assembly of the Church of Scotland. With these exceptions the members of the cabinet council, privy councillors, the judges and magistrates, all offices in the state and in the army and navy, may be filled by Roman Catholics or dissenters from the Established Church. The repeal of the Corporation and Test Acts opened the Municipal Corporations to Roman Catholics and Dissenters. Jews are the only class of persons who are excluded from the Houses of Lords and Commons, and from municipal corporations; but a bill under the superintendence of the government is at present passing through parliament which contains a form of oath to be taken by Jews who are elected to municipal offices in corporate boroughs. There are at present instances of persons of the Jewish religion who fill the office

of high sheriff, and are in the commission of the peace. [JEWS.]

The connection between the Church and State has been brought within comparatively narrow limits by the course of recent legislation. The Established Church is in possession of revenues from land, a large part of which are enjoyed under the old law of Frankalmoigne. [FRANKALMOIGNE.] The clergy also receive certain customary payments for the performance of marriages, christenings, and interments. Its form of polity is also guaranteed by the State. Parliament may alter the distribution of the property of the Church, as it has recently done by uniting and suppressing bishoprics, creating new sees, abolishing sinecures, and disposing of some parts of the revenues of the church for other church purposes [ECCLESIASTICAL COMMISSIONERS; BISHOPRIC]; but it has not yet sanctioned the diversion of the revenues of the Church to other purposes, though it has been on the point of doing so in the case of the revenues of the Established Church in Ireland.

On the 25th of April, 1836, Lord Morpeth, who was then Secretary for Ireland, brought in a measure which contained a clause known as the "Appropriation Clause," by which it was intended, after supplying the legitimate wants of the Irish Church, to apply 97,612*l.* out of the revenues of the Church to the moral and religious instruction of the Irish people. The principle of the appropriation clause was affirmed by the House of Commons after three nights' discussion, by a majority of 300 to 261. In the House of Lords the clause was rejected by 138 against 47.

The clergy of the Established Church constitute a distinct order. [CLERGY.] No person can be ordained to holy orders who does not subscribe to the Liturgy and the Thirty-nine Articles, which latter comprehend his assent to the doctrine of the king's supremacy. No person can hold any benefice without taking the oath of canonical obedience to the bishop. The constitution of the Universities of Oxford, Cambridge, Durham and Trinity College, Dublin, is such as to exclude persons who do not belong to the Established Church from a full participation in the advantages of these endowed seats of learning. [UNIVERSITY.]

The revenues of the Established Church in England and Wales, as returned to the Ecclesiastical Commissioners in 1831, were as follows:

	Gross. £	Net. £
Archbishops and bishops . .	181,631	160,292
Cathedral and collegiate churches and ecclesiastical corporations aggregate .	284,241	208,289
Prebends and other preferments in cathedral and collegiate churches .	54,094	44,705
Renewals of leases (average of three years) .	21,760	21,760
Benefices* (10,718)	3,251,159	3,055,451
	£3,792,885	3,490,497

The following is an account of all payments from the public monies to the Established Church of England and Ireland, or to the commissioners of Queen Anne's Bounty, from 1801 to 1840, both inclusive:—

	£
ENGLAND.	
Commissioners for building new churches . .	1,500,000
Grants from 1809 to 1820 inclusive, to governors of Queen Anne's Bounty for poor clergy . . .	1,000,000
Drawback on materials used in building new churches .	153,000
IRELAND.	
Grants for building churches from 1801 to 1820 . .	749,551
Grants for Protestant charter-schools from 1801 to 1829	741,048
Grant for relief of tithe arrears	1,000,000
Total . .	£5,193,599

In reference to the history of the Established Church in Ireland, it will be sufficient here to quote the fifth article of the act for the Union of Great Britain with Ireland (40 Geo. III. c. 67), passed July 2nd, 1800, which enacts, "That it be the

* See the article Benefice, pp. 354-5-6-7.

fifth article of union, that the Churches of England and Ireland, as now by law established, be united into one Protestant Episcopal Church, to be called the United Church of England and Ireland; and that the doctrine, worship, discipline, and government of the said united church shall be and shall remain in full force for ever, as the same are now by law established for the church of England; and that the continuance and preservation of the said united church, as the established church of England and Ireland, shall be deemed and taken to be an essential and fundamental part of the union."

There is this, amongst other peculiarities in the Established Church in Ireland, that it is the church of only about a tenth part of the population. When a special census of the population was taken in 1834, with the object of ascertaining the religious persuasion of the people, it was found that out of a total population of 7,954,760 there were—

		Proportion per cent.
Roman Catholics	6,436,060	80·9
Established Church	853,160	10·7
Presbyterians . .	643,658	8·4
Other Dissenters .	21,882	·2

In England and Wales, on the contrary, the majority of the population belong to the Established Church, and it is not placed in that anomalous position which the church occupies in Ireland. There is no authentic account of the number of persons who belong to the Established Church in England and Wales, and the number of marriages which are celebrated at dissenting places of worship is not an index of the numbers of the population who are dissenters; but it is indicative of the fact that the church has a considerable hold on the respect of a large mass even of those who do not belong to it, while its rites and ceremonies and doctrines contain so little to repulse men who are not churchmen, that we find in 1842, out of 118,825 marriages, only 6200 (representing a population of 806,000, out of a total of nearly sixteen millions) were celebrated in registered places of worship, under the act of the 6 & 7 Wm. IV. c. 86; and in only 2357 cases was the ceremony celebrated without any religious service. The number of dissenting places of worship registered pursuant to 6 & 7 Wm. IV. is 2232, while the number of marriages at each place does not on an average amount to three in the course of a year.

It is stated (*App. to First Report of the Commissioners of Public Instruction, Ireland*, 1834) that of the 1387 benefices in Ireland there were 41 which did not contain any Protestants; 20 where there were less than or not more than 5; in 23 the number was under 10; in 31 under 15; in 23 under 20; and in 27 benefices the number of Protestants was not above 25. There were 425 benefices in Ireland in which the number of Protestants was below 100. There were 157 benefices in which the incumbent was non-resident, and no service was performed. The number of parishes or ecclesiastical districts is 2408, and of this number 2351 possess a provision for the cure of souls; but the total number of benefices is only 1387, as before mentioned, of which 908 are single parishes, and 479 are unions of two or more parishes. Parishes are permanently united by act of Parliament, by act of Council, or by prescription, and they may be temporarily united by the authority of the bishop of the diocese. Latterly, perpetual curates, a new order in the Irish Church, have been appointed to a portion of a parish especially allotted to them, the tithe of which they receive and are not subject to the incumbent of the remaining portion of the parish, but hold their situations for life.

The episcopal revenues in Ireland are chiefly derived from lands let upon lease for twenty-one years, and renewed from time to time at the original rent, on payment of a fine on renewal, which fluctuates according to the altered value of the land. In 1831 the income of the episcopal establishment was 151,128*l.* This amount will in the course of a short time be reduced to 82,953*l.*, under the operation of the Church Temporalities Act [BISHOP; ECCLESIASTICAL COMMISSIONERS]; and the surplus of 68,175*l.* will be applied to the purposes of ecclesiastical discipline and education. Some of the leases belonging to the suppressed sees in Ireland have been converted into perpe-

tuities by the Irish ecclesiastical commissioners under the powers of the Church Temporalities Act, and have consequently been in so far alienated. The beneficed clergy derive their income chiefly from tithes, which have been placed on a better footing within the last few years. Glebe-houses are attached to 851 benefices. They have been built partly by donations and partly by loans from the Board of First-Fruits, and partly at the cost of the incumbent, repayable by instalments from his successors. The total quantity of glebe-land attached to benefices is 91,137 acres, but it is very irregularly distributed, and the proportion to each benefice is considerably greater in the province of Armagh than in other parts of Ireland. In cities and towns the parochial clergy are paid by an assessment called minister's money, which is levied on every house of a certain value. Some of these particulars are taken from Dr. Phillimore's edition of Burn's 'Ecclesiastical Law.'

By Lord Morpeth's (government) bill, introduced in 1836, and which was thrown out on the question of appropriation, as already stated, it was proposed to reduce the number of benefices in Ireland to 1250, and to give each incumbent an average income of 295*l.*, which would have been a higher average income than the incumbents enjoy in England and Wales. A table, which shows the number of benefices at different rates of income, as arranged under the Church Temporalities Act, will be found at p. 353, article BENEFICE. The extensive powers which the Irish ecclesiastical commissioners possess in relation to benefices are noticed in BENEFICE, p. 353.

The annual revenue of the Established Church in Ireland, during the three years ending 1831, was returned to parliament as follows:—

Archbishops and bishops	£151,128
Deans and Chapters	1,043
Economy estates of cathedrals	11,056
Other subordinate corporations	10,526
Dignities (not episcopal) and prebends without cure of souls	34,482
Glebe-lands	92,000
Carried forward	300,235
Brought forward	£300,235
Tithes	555,000
Ministers' money	10,300
	£865,535

The incomes of the parochial clergy in Ireland are subject to some deductions, as payments towards diocesan and parochial schools, repairs of certain parts of churches, and repairs of glebe-houses. Diocesan schools ought to be maintained by annual contributions from the bishop and the beneficed clergy; but the levy drawn from this source is little more than nominal. The parochial schools are supposed to be maintained by an annual stipend from the incumbent, which is estimated by custom at two pounds per annum: in many cases this has not been paid. (Phillimore's Burn, vol. i. p. 415.) The First-Fruits have been abolished by recent acts. They were designed to be the amount of the first year's income of every benefice, which was to be employed in the building and repairing of churches and glebe-houses, and the purchase of glebe-land; but the assessment was made on the value of benefices in the reigns of Henry VIII., Elizabeth, and James I., and yielded only a trifling sum.

In the British colonies the Episcopal Church is not established on an exclusive footing: other churches are supported or aided out of the public funds either furnished by the colony or the mother country. Some of the bishoprics in the colonies have been created by act of parliament, and their incomes are derived from the public revenues; but other colonial bishops are consecrated by the heads of the church, and appointed by them to colonial dioceses simply with the sanction of the government for the time.

The expression—Church and State, which is in common use, is apt to mislead. There was a time when the connection of Church and State in England was that which it is not now. At present the relationship of the State to the Established Church of England and Ireland is this. The King is the head of the United Church of England and Ireland,—a notion which is expressed by the term the King's Supremacy. A compound body makes laws for the British Empire,

—the King, the House of Lords, and the House of Commons; and of these three members the two last have no connection as legislative bodies with the Established Church, except so far as the bishops of England and Wales, and certain bishops of Ireland who sit in a certain rotation, have seats in the House of Lords. But the other members of the House of Lords and all the members of the House of Commons may profess any form of Christianity that they please. The property of the Church (a phrase also apt to mislead) is either enjoyed by ecclesiastical bodies, as deans and chapters, or collegiate churches, or it is enjoyed by individuals, as archbishops, bishops, rectors, and vicars. The ecclesiastical patronage, or the right to name those persons who shall enjoy the emolument arising from this property, is either in the Crown, that is, it is exercised by the Lord Chancellor in some cases, and in other cases by the prime minister for the time; or it is vested in private individuals. The Crown, that is, the minister, appoints to bishoprics and other ecclesiastical dignities. The Lord Chancellor has the patronage of many benefices at his disposal; and that of a very large number is in the hands of private individuals. The legislature has of late years interfered with the emoluments attached to bishoprics and ecclesiastical corporations, so as to make a different distribution of the revenues, but no emoluments have been applied to other purposes than purposes ecclesiastical. The legislature has not interfered with the revenues appropriated to benefices which are in the gift of the crown, at least not by any general measure, nor to those that are in the gift of private individuals. Benefices which belong to private individuals are appropriated to ecclesiastical purposes, and certain services [FRANKALMOIGNE] must be performed by those ecclesiastics who are nominated to such benefices. The right to present to vacant benefices is a kind of property; and benefices are things that may be bought and sold [ADVOWSONS], and have so far the characteristics of other private property, from which they differ only in this, that the annual proceeds of such benefices can only be enjoyed by ecclesiastical persons, who must perform the services of the Established Church. Tithes are due both to spiritual persons and in many cases to laymen; and accordingly they are property. Those tithes, which are due to laymen or civil corporations, are exactly on the footing of any other private property, and so are those which are due to spiritual persons, except that ecclesiastical services must be rendered for them, and they are set apart for the support of ecclesiastics. There can be no interference with this kind of property which would not justify any like interference with the property which Roman Catholics and other nonconformists hold for religious purposes. Tithes are often found to be an injurious charge upon lands; but those who own tithes own them by as good a title as he who owns the land which is charged with them; and under several recent acts provision is now made for commuting tithes into money payments. If Church Rates were abolished, there would be no reason for any member of the community, whether of the Established Church or not, to complain of the Established Church in England and Wales as a grievance, so far as concerns the property from which the revenues of ecclesiastical persons in the Church of England are derived. The case of the Church of Ireland is peculiar, and it is stated in this article.

If persons are allowed to form associations for the purposes of religion, which must be allowed in all states where every form of Christianity is allowed to be professed, they must also be allowed to hold property for religious purposes, unless the state pays all the preachers of religion. Whatever restraints, if any, should be put on the acquisition or holding of property for religious purposes, ought to be put on all religious bodies alike. That part of the land in England and Wales which is appropriated to the revenues of those ecclesiastics who are appointed by the Crown, must be considered as so much property held by the Crown for the purposes of the Church of England; and those benefices to which private individuals appoint must be considered as so much property held by pri-

vate persons for the same purposes. Any alteration in either of these two kinds of property in England and Wales, by which any part of it would be applied to other purposes than those to which it is at present applied, does not seem to be recommended by any measure of policy at present; and if it were, the same reasons would equally apply to all other property which is held by any person or body of persons in England and Wales, for the purposes of any other form of religion.

ESTATE. An estate signifies that title or interest which a man has in lands, tenements, hereditaments, or other property. It is either Real Estate, which comprises lands, tenements, and hereditaments held or enjoyed for an estate of freehold; or Personal Estate, which comprises interests for terms of years in lands, tenements, and hereditaments, and property of every other description. Personal Estate [CHATTELS] goes to the executors, and is liable for payment of debts before Real Estate.

This is the legal signification of Estate, which, as already shown, is not a piece of land or other property, but signifies the relationship of ownership between a man and property. The word was also used in former times to signify men's station (status) or condition in life. It was also used, and is still sometimes used, to signify a class or order in a state.

Real Estate may be considered under three heads:—(1) the quantity of estate, *i. e.* the amount of interest in the owner; (2) the time when that interest is to commence; and (3) the quality of estate, or the mode in which it is to be enjoyed.

1. All real estates not being of copyhold tenure [COPYHOLD], or what are called customary freeholds, are either of Freehold or less than Freehold. Freeholds may be divided into two kinds; freeholds of inheritance, and freeholds not of inheritance. Freeholds of inheritance admit of a further subdivision, into inheritances absolute, called fees simple, and inheritances limited, called qualified or base fees, and fees conditional. A freehold of inheritance absolute or Fee Simple is the largest estate which a man can have: the owner may freely dispose of it to whom he pleases in his lifetime by deed or by will, and if he dies without making any disposition, it descends to his heir. [DESCENT.]

A qualified or Base Fee has some qualification or limit annexed, which may determine the estate, as in the instance of a grant to A and his heirs *tenants of the manor of Dale.* Whenever A or his heirs cease to be tenants of that manor, their estate is determined, that is, is at an end, though during its continuance the proprietor has the same rights as if he were absolute tenant in fee simple.

A Conditional Fee at common law was a fee restrained to some particular heirs exclusive of others, as to a man and the heirs male of his body, by which limitation his lineal heirs female and collaterals were excluded; and this is the origin of Estates Tail. It was held that if the donee, in the case supposed, had no heirs male of his body, or if, after a male child was born, no alienation were made, the land should revert to the donor on the failure of heirs male of the donee's body: in fact, for all purposes of alienation it was a fee simple, on condition that the donee had male issue. The nobility, however, being anxious to preserve their estates in their own families, procured the Statute of Westminster the Second, 13 Ed. I. c. 1, commonly called Statute de Donis Conditionalibus, to be made, which enacted that the will of the donor should be observed, and that the land should go to the heirs specified, if there were any, or if none, should revert to the donor. Thus the donor acquired an estate in reversion, which could only be allowed, consistently with the nature of estates in reversion, by considering the conditional fee to be changed into a limited, or, as it is called in technical language, a particular estate. This kind of estate was called an estate *tail*, from the word *talliare*, to cut, being as it were a portion cut out of the whole fee. Means were soon however discovered by the ingenuity of the lawyers to enable the donee and his heirs of the specified description to cut off the Entail, as it was called.

A Freehold, not of inheritance, is an estate which the owner has for his own life only, or the life of some other person,

or until the happening of some uncertain event. The following are instances:—a gift to A until B returns from Rome; but if the gift had been to A and his heirs until B returns from Rome, the estate would have been a qualified or base fee; and if B had died without returning from Rome, would have become a fee simple absolute. Some freeholds not of inheritance, arise from operation of law, as tenant in tail after possibility of issue extinct, which is where an estate is limited to A and the heirs of his body to be begotten on the body of B his wife, which is called an estate tail special, as distinguished from an estate tail general, that is, to A and the heirs of his body, without specifying the woman from whom they must spring. If B dies without children, A is no longer tenant in tail, but tenant in tail after possibility of issue extinct, and, as to the duration of his estate, he is simple tenant for life. As to tenant by courtesy and tenant in dower, see COURTESY and DOWER.

Of estates less than freehold there are three kinds—estates for years, at will, and by sufferance. An estate for years (which includes an estate from year to year) is personal property, and, like other chattels [CHATTELS], upon the death of the owner, without having disposed of it in his lifetime, devolves upon his executors or administrators. An estate at Will arises where a man lets lands to another expressly at the will of both parties, or without limiting any certain estate; either party may put an end to the tenancy, though, for the sake of general convenience, the courts as far as possible consider them as tenancies from year to year, for the purpose of rendering a six months' notice necessary to their determination. An estate by Sufferance arises where a tenant, who has entered by lawful title, continues in possession after his interest has determined: this estate may be put an end to at any time by the lawful owner, though, after acceptance of rent, the law would consider it as a tenancy from year to year, as in the case of a tenancy at will.

All these estates, real and personal, freehold or less than freehold, freeholds of inheritance or not of inheritance, may become subject to another qualification, and be called estates upon condition, being such whose existence depends upon the happening or not happening of some uncertain event whereby the estate may be either originally created or enlarged, or finally defeated.

2 Estates are either in possession or in expectancy.

An estate in possession requires no explanation here. Estates in expectancy involve some of the nicest and most abstruse learning in English law: they are divided into estates in remainder and reversion, and by executory devise or bequest; and again, remainders are divided into estates in remainder vested or contingent. An executory devise or bequest is such a limitation of a future estate or interest in lands or chattels as the law admits in the case of a will, though contrary to the rules of limitation in conveyance by deed.

3. Estates may be enjoyed in four ways; in severalty, in joint tenancy, in coparcenary, and in common.

An estate in severalty is when one tenant holds it in his own right without any other person being joined with him.

An estate in joint tenancy is when an estate is granted to two or more persons at the same time, in which case they are joint tenants, unless the words of the grant expressly exclude such construction; they have unity of interest, of title, of time of vesting, and of possession, and upon the decease of one, his whole interest, unless disposed of by him in his lifetime, remains to the survivor or survivors.

An estate in coparcenary is when an estate of inheritance descends from the ancestor to two or more persons, who are called parceners, and amongst parceners there is no survivorship. If a man dies seized of an estate of inheritance in land, and have no male heir, it descends to the female heir, and if there is more than one of them in the same degree of kin, it descends to them in equal shares, and they are called parceners or coparceners.

An estate in common is when two or more persons hold property, by distinct titles and for different interests, but by unity of possession.

All these three last-mentioned modes of joint and undivided possession may be put an end to by the parties interested, either by certain modes of conveyance or by partition.

Estates are also Legal or Equitable. It is a legal estate when the owner is in the actual seisin or possession, and also entitled to the beneficial interest himself, or in trust for some other person. An Equitable estate is when some other person, not the person who is the actual and legal owner, is entitled to the beneficial interest of the property of which that other is in possession. The power of the beneficial owner over his equitable estate is as complete as if he were possessed of the legal estate.

EVIDENCE. Legal evidence denotes the means by which facts are ascertained for judicial purposes. The practical importance of the subject is obvious from this definition; and it has accordingly not only attracted much attention from judicial writers, but has formed a prominent part of the jurisprudence of most civilised countries, though the particular rules of evidence have been different in different systems of law. The Roman law contains (so far as we now know it) few regulations respecting evidence, the whole subject being comprised in one short chapter of the Digest, which lays down several positive rules for the exclusion of witnesses within prescribed degrees of consanguinity to the litigant parties. In the common law of England, where facts are ascertained by juries, the body of rules and restrictions denominated the law of evidence has been gradually established within the last two centuries. Previously to that time, in the infancy of the trial by jury, as we understand that institution, the only positive rules respecting evidence were those which related to the two witnesses in treason required by statutes passed in the reign of Edward VI. This gradual development of restrictions upon the admission of testimony seems to show that, in this country at least, the tendency has been to contract and not to enlarge (as some writers have supposed) the rules of judicial evidence. The accounts of our earlier judicial proceedings contained in the state trials sufficiently prove that it was the practice formerly to admit without scruple or question every species of testimony; whereas the present law of evidence is almost wholly composed of restrictive rules.

In giving a compendious view of the principles of the English law of evidence (which are the same at equity as at common law, and in criminal and civil proceedings) it is proposed—1. To enumerate the limitations which it prescribes to the competency of witnesses; 2. To give a brief summary of the principal rules by which the reception of oral evidence is governed; and 3. To state the principal rules which relate to written evidence.

I. *Of the competency of witnesses.*—The general rule of English law upon this subject is, that all persons may be witnesses in courts of justice who have sufficient understanding to comprehend the subject of their testimony, and sufficient religious principle to ensure a right sense of the obligation of an oath to speak the truth. Thus very young children are admissible as witnesses, if they have a competent knowledge of the nature of an oath, and a religious apprehension of the consequences of falsehood. All testimony, by the law of England, must be given under the sanction of an oath, or affirmation in the case of Quakers and Moravians; but the form of the oath is immaterial, and nothing is required beyond a persuasion upon the mind of the witness that in swearing to the truth of what he states he is appealing to a Divine Being who will punish him for falsehood. A Christian is sworn upon the Gospels; a Jew, upon the Old Testament; and a Mohammedan or other person not a Christian, in such form as he considers binding. [OATH.]

To the general rule of the admissibility of all persons of sufficient intellect and religious belief there are several important exceptions. In the first place, a husband cannot be a witness for or against his wife, nor a wife for or against her husband; a rule which is said to arise from the identity of interest subsisting in such a connexion. However, in criminal prosecutions founded upon personal violence committed by either of these parties upon the other, such testimony is

admitted upon the ground of necessity. Secondly, in actions at the common law, a party to the suit cannot be examined as a witness; but in courts of equity defendants in a cause may be made witnesses upon a special application for that purpose; and in those courts, if a plaintiff consents to be examined as a witness his evidence may be admitted. Thirdly, a person cannot be a witness who has been convicted of treason or felony, or of any offence which involves the *crimen falsi* (such as perjury or cheating), or which is liable to a punishment which the law considers infamous, as whipping, branding, or the pillory. This principle of exclusion, which is derived from the Roman law (*Digest* ii., tit. "De Testibus"), is now of little practical importance, as the recent statutes have enacted that a pardon in felons, or the actual endurance of the punishment in felony or misdemeanour, excepting perjury or subornation of perjury, shall have the effect of restoring the competency of the party as a witness. Fourthly, the law of England excludes the evidence of those who have a direct interest in the result of the proceedings in which they are called to testify. The indefinite state of the rule respecting the nature of the disqualifying interest led to much perplexity in its practical application. These rules are, however, now altered by a recent act, which will presently be mentioned.

The nature of the interest which disqualified a witness was this: either he must be directly and immediately benefited by a result of the proceeding favourable to the party who called him, by exonerating himself from a liability to costs, or to some process founded upon the decision of the cause in which he was called to testify; or he must be in such a situation as to be able to avail himself of the decision of the cause, by giving it in evidence in support of his own interest in some future litigation. With the view of removing the practical difficulties arising from the rule as to a witness being able to avail himself of the decision of the cause, by giving it in evidence in support of his own interest in some future litigation, it was enacted by the stat. 3 & 4 Will. IV. c. 42, § 26, that "if any witness shall be objected to as incompetent, on the ground that the verdict or judgment in the action on which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined; but in that case a verdict or judgment in that action in favour of the party on whose behalf he shall have been examined, shall not be admissible in evidence *for* him; nor shall a verdict or judgment against the party on whose behalf he shall have been examined be admissible in evidence *against* him. By the 27th section, it was enacted that the name of every witness objected to as incompetent, on the ground that the verdict or judgment in the cause in which he is examined would be admissible in evidence for or against him, shall, at this trial, be indorsed on the record on which the trial shall be had, together with the name of the party on whose behalf he was examined, and shall be afterwards entered on the record of the judgment; such indorsement or entry to be sufficient evidence that such witness was examined in any subsequent proceeding in which the verdict or judgment shall be offered in evidence. The act 6 & 7 Vict. c. 85, entitled 'An Act for improving the Law of Evidence,' enacts, "That no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence, either in person or by deposition, according to the practice of the court, on the trial of any issue joined, or of any matter or question or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any court, or before any judge, jury, sheriff, coroner, magistrate, officer, or person having, by law or by consent of parties, authority to hear, receive, and examine evidence; but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or injury, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding

that such person offered as a witness may have been previously convicted of any crime or offence: provided that this act shall not render competent any party to any suit, action, or proceeding individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate and individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively; provided also, that this act shall not repeal any provision in a certain act passed in the session of parliament holden in the seventh year of the reign of his late majesty and in the first year of the reign of her present majesty, intituled 'An Act for the amendment of the Laws with respect to Wills:' provided that in courts of equity any defendant to any cause pending in any such court may be examined as a witness on the behalf of the plaintiff or of any co-defendant in any such cause, saving just exceptions; and that any interest which such defendant so to be examined may have in the matters or any of the matters in question in the cause shall not be deemed a just exception to the testimony of such defendant, but shall only be considered as affecting or tending to affect the credit of such defendant as a witness." This act does not extend to Scotland.

II. *The principal general rules by which the reception of oral evidence is regulated.*—The first general rule (which applies equally to written as to oral testimony) is that all evidence produced must be relevant to the point at issue between the parties. The object of special pleading by the common law is to reduce controversies between parties to particular issues, or propositions of fact affirmed by one and denied by the other, which are to be decided by the jury; and the rule of evidence, that the proofs in the cause must be strictly confined to these issues, is founded upon obvious reasons of justice as well as convenience. Secondly, the affirmative of every issue is to be proved; that is, the party who asserts the affirmative of a proposition must prove it. Thirdly, in proving a fact, the best evidence of it must be given of which the nature of the thing is capable. Thus, a party is not permitted to prove the contents of a deed by a copy, and still less by oral testimony, where the deed itself may be produced; nor to prove the execution of a deed by any other person than a subscribing witness, when he is living and producible. This rule is justified by the presumption which the offer of secondary evidence raises, that the production of the best evidence might have prejudiced the party in whose power it is, had he produced it. This rule is not, however, to be understood as requiring that all the evidence which can be given upon the fact in dispute should be produced; as, for instance, if there are several attesting witnesses to a deed or other contract, it is not necessary that more than one should be called. Fourthly, hearsay testimony, which is a statement on oath of what an absent person has said respecting a fact to be proved, is, in general, excluded both on the ground that the witness to the actual fact does not declare his knowledge upon oath, and also because he is absent from the cross-examination of the party who is to be affected by what he states. To this rule, however, there are the following exceptions:—1. The declarations of persons who are in imminent danger and under the apprehension of immediate death, and who are therefore considered to be speaking under as powerful a religious sanction as the obligation of an oath; 2. The declarations of deceased persons, and made against their interest; as, for instance, charging themselves with the receipt of money on account of third persons, or acknowledging the payment of money due to themselves; 3. The declaration of deceased persons respecting rights of a public nature, such as the boundaries or general customs of a manor or district; 4. The declarations of deceased persons on questions of pedigree, or family occurrences of ancient date before the memory of living witnesses, such as births, deaths, or marriages. With respect to the two last exceptions, however, evidence of declarations of this kind is inadmissible, if they have been made *post*

litem motam, that is, after the matter to which they relate has become the subject of litigation.

III. *Written evidence consists of records, documents under seal, as charters and deeds, and writings not under seal.*—Acts of parliament are records of the highest nature, being the memorials of the legislature; but a distinction is made with respect to evidence between public and private statutes. A public statute requires no express proof in courts of justice, every one being presumed to know the law which he is bound to observe; as to them, therefore, the citation of the statute itself is in all cases sufficient. But private acts of parliament are considered as documents relating to individuals, and must therefore be proved by copies compared with the original roll of parliament. A second and inferior species of records is the proceedings of courts of justice, which are proved by exemplifications, sworn copies, and office copies. Exemplifications are transcripts of the records of different courts, accredited by having the seals of such courts attached to them. Sworn copies are transcripts made by individuals who authenticate them upon oath, when they are produced in evidence. Office copies are copies certified to be true and accurate by an officer expressly intrusted for that purpose by an officer of the court to which the records belong. Charters and deeds are proved by the production of the instrument and proof of the execution by the party to be charged with it; but where the document is more than thirty years old, the execution need not be proved. The general rule is that the original deed must be produced, on the principle already alluded to of its being the best evidence; but this is subject to the following exceptions:—1. Where it has been lost or destroyed by accident; 2. Where it is in the possession of a party to a suit against whom it is sought to be produced, and who refuses to produce it: in either of which cases the contents of the document may be proved by a copy, or, if no copy exists, by oral testimony. Deeds attested must, in general, be proved by one at least of the subscribing witnesses; but if the attesting witnesses be dead, or are not to be found after a diligent search, or for any other reason incompetent to give evidence, the execution of the deed may be proved by proof of the hand-writing of the party. The proof of hand-writing, by the law of England, is peculiar. The testimony of persons skilled in hand-writing is wholly excluded, comparison of hands being inadmissible for the purpose. The course is, that a witness acquainted with the writing of the individual in question, and who has seen him write, or who has had a written correspondence with him, shall testify to his belief that the document to be proved is in his handwriting.

From the above summary of the principal rules of evidence existing in the English law, it will be observed that the system is extremely exclusive. Upon the subject of interested witnesses, the law has lately been altered in the way already explained. With respect to the reception of secondary and hearsay evidence, it sanctions no degree or kind of testimony at second-hand (except in the cases above enumerated), but excludes it under all varieties of circumstances. It is true that we ought not to attach so much weight to hearsay evidence as to direct testimony, because it is beyond all doubt that the certainty of obtaining the truth is diminished, and that the means and causes of error are multiplied, in proportion as you remove from the actual observer and add links to the chain of testimony. But it may still be questioned whether the absolute and unconditional rejection of hearsay evidence is useful. Also with respect to the mode of proving hand-writing, it might be unsafe wholly to rely upon the evidence of comparison of hands by persons of experience in that occupation, but there seems no good reason why such proof should not be *admissible* in aid of the present vague and unsatisfactory mode of proof by the general belief of a witness.

The most plausible reason for the exclusiveness of the English law of evidence is derived from the nature of the trial by jury, with reference to which it is contended to be safer to withdraw doubtful evidence altogether from their consideration, than to leave it to persons who are often uninstructed, and incapable of drawing correct distinctions upon the subject

of testimony, to form a proper estimate of its credibility. But this reason is founded upon an assumption not justified by the fact, namely, that the means of proof actually legalized are infallible guides to truth; whereas the truth is, that many of them are quite as liable to lead to a false conclusion as those which are excluded. In this state of things, therefore, there seems no good reason why all practicable means of attaining to truth, however various in their degrees of effectiveness, should not be committed to juries. This seems indeed to be the growing impression in the profession; the inclination of the courts of late years being to let in as much light to a cause as possible, and to regard objections to evidence rather as matters of *credibility* upon which juries may exercise their judgment, than of *competency* to be wholly withdrawn from their consideration.

Witnesses in proceedings in Equity are examined upon written interrogatories, as explained in the article EQUITY. The interrogatories are drawn by counsel, according to the instructions which he receives as to the facts which a witness is considered able to prove; but it frequently happens that the instructions are very defective, and the counsel is obliged to frame his interrogatories as well as he can, in order to elicit the proof of facts favourable to the party for whom he is employed. Though each several interrogatory, when well drawn, is framed for the purpose of establishing some single and distinct fact, or connected facts, written interrogatories cannot from their nature be otherwise than long and somewhat difficult to comprehend. In the oral examination of a witness, it necessarily happens that several questions must be asked consecutively for the purpose of completing the investigation into and the establishment of every important fact to which the examination is directed. Written interrogatories must be framed on the same principle, and therefore every subsequent part of an interrogatory must be framed on the supposition of every previous part being answered in some way; and, consequently, it is hardly possible in written interrogatories to avoid what is called making them *leading*, and at the same time verbose and cumbrous. These long interrogatories, it is proved by experience, are often imperfectly comprehended by the witnesses, and consequently their evidence is in some respects either incomplete or inaccurate, or both. The interrogatories which either party proposes to his witnesses are not known to the adverse party until the examination of all the witnesses on both sides is concluded, when *publication* is passed, as it is termed, and copies of all the depositions are delivered to the litigating parties under an order of the court.

Witnesses in courts of law are produced before the court, and examined by counsel; after which they may be cross-examined by the counsel for the other side. In the equity system there is of course no cross-examination, in the proper sense of the term; for one party does not know what the witnesses examined by the opposite party have deposed, and cannot therefore effectually examine them, as in a court of common law, where the cross-examination of a witness follows, and is founded upon what the witness has stated in his examination in chief. If a party to a suit in chancery will cross-examine a witness who is produced by his adversary for examination, he must examine him on written interrogatories, without knowing what interrogatories have been proposed to him by the opposite party, and without knowing what he has said in his depositions in chief. Such a cross-examination must be in general altogether useless, and often dangerous to the interest of the party making it; unless the witness is one whom he would himself have examined in chief. Under the 32nd order of the 21st of December, 1833, the last interrogatory before that date commonly in use is in future to be allowed as follows: "Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them," &c. A party, however, is not bound to insert this interrogatory; and, indeed, no great harm will result if it is never used. Owing to various causes, such as disinclination on the part of a witness to give himself further trouble, particular affection to one of the

litigating parties, or forgetfulness, it might have been anticipated that this general interrogatory would fail in its object; and so far as it has been used, such is said to be the case.

This mode of ascertaining facts in suits in equity is evidently very defective, and has been the subject of considerable complaint and of lengthened inquiry; but hitherto nothing has been done to amend the system.

(See *Minutes of Evidence taken before the Chancery Commissioners, annexed to their Report of* 1826; and a pamphlet (1837), by W. A. Garratt, entitled *Suggestions for Reform in Proceedings in Chancery.*)

Those who may be inclined to follow this subject further will find it discussed at great length in Bentham's *Rationale of Judicial Evidence*, a work which has certainly contributed to the formation of more correct opinions on evidence; but it has neither exhausted the subject, nor is it free from great defects. The rules of the English law of evidence are contained in the treatises of Mr. Phillipps and Mr. Starkie.

EXCHANGE. [DIVISION OF EMPLOYMENT; DEMAND AND SUPPLY; BALANCE OF TRADE.]

EXCHANGE, BILL OF, may be described as a written order or request addressed by one person to another, directing him to pay on account of the writer to some third person or his order, or to the order of the person addressing the request, a certain sum of money at a time therein specified. The person who gives the direction is called the drawer of the bill, he to whom it is addressed the drawee, and he in whose favour it is given the payee, or, occasionally, the remitter. Bills of exchange are ordinarily divided into two classes, foreign and inland; foreign bills comprehend such as are drawn *or* are payable abroad; inland, those which are drawn *and* payable in England. Thus, a bill drawn in France, or even in Scotland or Ireland, upon a party in England, or conversely, is a foreign bill; and this is a distinction that has important legal consequences.

The origin of bills of exchange is unknown. It is probable or almost certain that the Greeks and Romans were acquainted with some modes of remitting money and paying debts, similar to those effected by a bill of exchange. Instruments of this kind were current among the commercial states of Italy in the early part of the fourteenth century, and it is probable they were not unknown at the close of the same century in England.

It is certain that bills of exchange were originally employed solely as media of remittance, and the circumstances which brought them into use may be explained as follows:—A., at Hamburg, consigned goods to B., in London, either in execution of an order, or as his factor for sale. B., thereupon, being debtor to A. for the invoice amount, or the proceeds of the sale, as the case might be, was desirous of remitting to A. accordingly. The remittance could only be made in money or in goods; but A. might not want a return cargo of English commodities, and the sending out of specie would be inconvenient and hazardous. Now suppose that some third person, C., were about to go from Hamburg to London, mutual accommodation would suggest the following arrangement:—A. would deliver to C. an open letter addressed to B., requesting him to pay to C. the amount intended to be remitted: and C. on receiving the letter would pay to A. the value of it in money current at Hamburg, and having carried it over to London would there receive from B. the sum specified. Thus much of the expense, and all the risk and trouble of remittance would be saved to B. or A.; and C., besides having a more convenient sign of wealth, would probably receive some advantage for the accommodation. It is obvious, however, that to bring this exchange into operation several things would be wanting: first, the knowledge by the two parties of the mutual want; secondly, confidence on the part of C. that the money would be paid by B. on presentment of the letter of request, or that in default of payment by him he would be repaid by A.; and, thirdly, the determining how much C. ought to give A. in ready money of Hamburg for the sum specified in the letter, to be paid at a future day in money of England. Now the adjustment of the

comparative value of different currencies, fell directly within the province of the money-dealers or bankers, and as all persons about to remit or to proceed to foreign countries resorted to them for the requisite coin, they would furnish the merchants with information as to the other particulars also, and would thus become the negotiators of this sort of exchanges.

But there were other cases in which the like operation might take place, for although A. might not want goods from England in return for those shipped by him from Hamburg, other Hamburg merchants might, and so it might happen that at the time of the intended remittance B. had money owing to him at Hamburg in respect of goods so shipped. Let it be supposed then that C., instead of going to London, were about to remit money to B., in that case the whole or a portion, as well of B.'s debt to A. as of C.'s debt to B., might be settled by a simple arrangement of the same kind as that before described. B. would write a letter addressed to C., requesting him to pay a specified sum to A., or, in mercantile phrase, would draw upon C. in favour of A.; this letter or draft he would remit, as payment, to A., who, upon presentment to C. would receive from him the amount, and would give credit to B. accordingly.

Now, as the trade between two countries never, unless under very unusual circumstances, consists solely of shipments of goods on the one part, and solely of remittances of money on the other—it might happen that if B. had not a debtor at Hamburg other London merchants would have sums of money owing from Hamburg. B. would endeavour to find out some such merchant, from whom he might procure an order upon his debtor; in other words, he would buy a bill on Hamburg for remittance to A. For the reasons before mentioned, recourse would be had for this purpose to the money-dealers; and it is not difficult to conceive by what steps the procuring and supplying of bills soon became in their hands a distinct business.

Indeed, without the intervention of such dealers, the system could never have become extensively useful; because in the commercial intercourse of two countries the commodities exchanged will never be exactly balanced. There is at times a scarcity of bills upon one country and an excess of those upon some other: but this inequality is equalized by the care of those persons whose business it is to deal in bills; for they send or procure the superfluous bills in one market to meet the demand in another.

The instrument of transfer, or bill of exchange, now assumed a concise and permanent form. At first the order would probably be, to pay on presentment to the drawee, or as it was expressed in the instrument, "on sight." But, as the intervals between drawing and presentment would be variable, it became the practice to fix them by a definite scale; and hence probably arose what was called the *usance* between two ports or countries, or the period fixed by *usage*, at which, with reference to the date, a bill was presentable for payment. Afterwards these usances came to signify the periods at which the merchants of any particular country or port were in the practice of paying the bills so drawn upon them, and these customary periods being universally known, the word usance soon came to signify a specific term of days, and it was formerly not uncommon, when by agreement the time of payment was determined, to draw foreign bills payable at one, two, or more usances. In modern times, the more frequent practice has been to make them payable at so many days after sight, or at so many months or days after date. In course of time the practice was also established of granting what was termed *days of grace*, or a short time to the drawee for providing the requisite cash: these days of grace, though varying as to limits in different communities, are generally recognised as part of the custom of merchants.

Originally, as we have supposed, the bill was a letter addressed by B. to C., directing him to pay A. But as it might not be convenient to A. to present the letter in person, it became usual to give him authority to appoint another, by whom the presentment might be made and the money received. It assumed therefore the form of a direction to pay A., or such

other person as A. should appoint, expressed with the conciseness of mercantile language, thus: "Pay A., *or order*." But if the letter or bill in the hands of A. were assignable, that is transferable by him to another person, there was no reason why it should not be so in the hands of his assignee, and thus by the operation of the words "or order," it obtained the character of a negotiable instrument or sign of value, transferable from one person to another. The assignment might be in such form as this: "Pay the within to D., or his order—signed A.," and by a similar superscription D. might in like manner assign the bill to E., and E. to F., and so on. But as the bill was of course *delivered* to each successive assignee, possession was of itself a sufficient voucher for payment, and the special superscription therefore was soon frequently dispensed with as unnecessary, the assignment of the prior holder being indicated by his signature alone. In England, and in some other countries, it has long been the practice to write the assignment on the back of the instrument, and it has thence received the name of an *indorsement:* the form first described, in which the assignee is named, is termed a *special* indorsement, or an indorsement *in full;* and the mere signature of the assigner is called an indorsement *in blank.*

When bills were drawn payable at some future day, one might suppose that the first holder who had the opportunity of doing so should, during the currency of the specified period, shew the bill to the drawee, and procure from him an undertaking to pay it at maturity. If he refused, the bill was protested for non-acceptance, and notice of the dishonour was immediately communicated to the drawer. If he gave the undertaking either verbally or in writing upon the bill or otherwise, he was said to have *accepted* it, and became thenceforth liable, as the acceptor, for the amount specified. For the effect of the acceptance was this: the drawee thereby affirmed the right of the drawer to call upon him for payment of the money, and he assented to the transfer of the right. If, therefore, after acceptance, he refused to pay the bill when due, he was responsible to the drawer as having acknowledged himself to be his debtor, and to the payee or other party in possession of the bill, in respect of his express engagement. But the right of the holder was not confined to the acceptor; for although, after acceptance, the drawee became the principal debtor, to whom recourse must be had in the first instance, yet if upon regular presentment the drawee did not pay, the holder was not bound to take measures against him alone, but might resort to all prior parties whose names appeared upon the instrument. For as the indorsement gave the right to receive the money, it was to be presumed that it had not been made without an equivalent, and it was but justice, therefore, that on the dishonour of the bill by the drawee, the holder should receive back the value which he had given: and as every person, whose signature, whether as drawer or indorser, appeared upon the bill, acknowledged himself by the act of signing to have received value for the delivery of the order, it was not unreasonable that the reimbursement should be claimed, not merely from the party from whose hands the bill had been received, but also from the drawer and every other party whose name preceded that of the holder. The result therefore was this: if the drawee paid the bill, the matter was settled; but if he dishonoured it, by a refusal either to pay or to accept on due presentment, a notification of the dishonour was conveyed by the holder to all parties preceding him, or to such as he thought fit to call upon for indemnity; if then the drawer paid the money, or as it was termed *took up the bill,* all the other parties were exonerated, and the drawer had his remedy against the drawee, upon the bill if accepted, or upon the original consideration in respect of which it was drawn, if the acceptance had been refused. In like manner, whoever satisfied the bill by payment, thereby discharged all parties posterior to himself, and obtained a right against all who preceded him. Thus each successive indorsee had the accumulated security of all the parties whose signatures were upon the instrument as acceptor, drawer, or indorser, when it came into his hands.

The party who remits a bill is by the supposition debtor to him to whom the remittance is made; and after the explanation just given, it will be obvious that it would be required of him to acknowledge his liability by making himself a party to the instrument. The bill therefore purchased by him would not be, as has been above supposed, a direction to pay the remittee, but to pay the remitter or his order; and hence it happens, as was said in the commencement, that the party to whom the bill is made payable, is sometimes called the *remitter*.

To obviate the inconvenience that may result from bills being lost, it became usual to draw them *in sets;* that is to say, two or more parts of each bill were drawn, and described as the 1st, 2nd, 3rd, and so on, each containing a condition that it should be payable only while the others remained unpaid. But this practice of drawing in sets is made available for another purpose. The payee having indorsed and paid away one part, frequently remits another part to some agent or correspondent at the place of the drawee's residence, to be by him presented for acceptance, with a direction added, by way of memorandum, to the bill, that, when accepted, it is to be held for the use of the person who shall duly present the other part or parts for payment at maturity. The advantage of this arrangement is obvious: if the bill be accepted, it is held, according to the direction, till maturity: if refused, it is protested, and notice is given to the drawer. Upon this protest the drawer may be called upon to give security for the due payment of the bill at the expiration of its currency; or, as occasionally happens, some correspondent of the drawer at the place upon which the bill is drawn accepts it for his honour, and thereby places himself in the situation of the original drawee, being liable as acceptor to all parties subsequent to the drawer. Such an acceptance is called an acceptance *supra protest*, or *for honour*, and may be made at any time during the currency of the bill, and on behalf of any party who is liable upon it after default made by the drawee. The following illustration will show the use of a Bill of Exchange.

A person in London has a payment of 1000*l.* to make in Paris. Instead of remitting the money, he goes to an exchange-broker, and purchases from him a bill on Paris equivalent to that sum. The bill will be payable in francs; and it will be necessary to ascertain how many francs are equal to 1000*l.* By the mint regulations between England and France, 1*l.* sterling of English money is equal to 25 francs, 20 cents, which is therefore the nominal or standard *par* of exchange between the two countries. According to this scale, then, 1000*l.* in London would be worth 25,200 francs in Paris. But the par is fixed on the supposition that the currencies of the two countries respectively are uniformly of the weight and purity established by the Mint, whereas the coin is often debased by alloy or attrition, and the relative value undergoes a corresponding alteration. This deviation however is well known, and may be regarded as comparatively constant. But other circumstances, which are not constant, affect the ratio of value. When, for instance, any considerable portion of the circulating medium of either of the two countries between which the exchange is to be effected consists of a paper currency, the standard is materially affected by the quantity of paper in circulation. A redundancy of paper money has invariably the effect of depreciating the standard, or, in other words, of raising the value of the *standard coin* as compared with the same nominal sum in *paper money*. This effect is temporary only when the paper is convertible into specie on demand; if inconvertible, it is both permanent and considerable. Thus at one period of the late war, the English guinea was worth 26*s.* in money, estimated according to the value of the 1*l.* sterling in bank notes. At that time therefore the English pound would fall far below the Mint standard of 3*l.* 17*s.* 10½*d.* per ounce, and a proportionate effect would be produced on the rate of exchange with any other country in which the standard was maintained. Taking, as before, the instance of France, the par would vary, other things remaining constant, from 25 francs to somewhere about 19 francs, or 1000*l.*, in a Bank of England

note, would buy a bill on Paris, not for 25,200 francs, but for about 19,000 francs only. But the same cause might be operating in France also, in which case the calculation would be still further complicated by a *comparison* of the depreciation in the one country with that in the other. The variation here taken for an example is an extreme case, but fluctuations the same in kind, though less in degree, are still of continual occurrence, and must be carefully taken into account in all calculations as to the price of bills.

But there are other causes in operation which materially affect the rate of exchange and the price of bills. The accommodation of a remittance in the form of a bill of exchange is worth a calculable sum, the maximum being the compound of the labour, expense, and risk of the transmission of money in specie. Suppose this maximum to be one per cent., it is evident it is worth the while of the remitter to pay any sum short of 10*l.* for the purchase of a bill equivalent to 1000*l.* Now the market price of bills is mainly dependent on the relation of the supply to the demand, and this again is primarily regulated by the state of trade between two given countries. When the value of the exports to any country in a given period is equal to the value of the imports from the same country in the same period, the trade is said to be balanced: the bills drawn in each country upon the other will be equal in amount, and this equilibrium constitutes what is called the *real* par of exchange. But this state of things can never actually exist. Even where, upon the average of years or months, the trade is nearly even, there will be disturbing circumstances which will have a temporary effect upon the exchanges. There will consequently be occasional scarcity and occasional abundance of foreign bills in the market. When scarce, their price of course is higher, or, as it is ordinarily expressed, they bear a *premium.* At such times the imports exceed the exports, and the exchanges are said to be *against us.* Suppose that, in the trade between England and France, the value of our imports from France exceeds that of our exports to France by about three-fourths. The effect of this, if matters were left to themselves, would be, that of the remittances to France three-fourths must be made in specie, and that the bills in which the remaining one-fourth was made would be at the maximum price, that is to say, taking the scale before adopted, would bear a premium of all but one per cent. But it is an established fact, that in every trading community the value of the whole of the exports taken together is, upon an average, very nearly balanced by the value of the whole of the imports, or, in other words, that ultimately all commodities imported are paid for directly or indirectly in commodities exported. Therefore, the bills drawn in England upon foreign countries nearly balance the bills drawn in foreign countries upon England in the same period. Thus, although there may be a deficiency in London, to the extent of three-fourths, of bills upon France, there may be an excess, in nearly the same ratio, of bills upon Belgium, and in like manner there may be an excess in Belgium, to the same extent, of bills upon France. The London bill-merchant by means of his agent will buy bills upon Paris at Antwerp, where they are cheapest, and bring them for sale to London, where they are dearest. The cost of procuring, and the profit of the bill-merchant, therefore, upon this transaction, constitute the third element in the calculation. Supposing then the bill to be a *good* one, that is to say, guaranteed by names of known and established credit, the only remaining operation is to estimate the discount according to mercantile practice, or, in other words, the interest of 1000*l.* in money for the time which will elapse before payment of the bill; and the combined result will give the sum in francs for which the bill is to be drawn, or the amount of bills already drawn to be given in exchange for 1000*l.*

Bills of exchange are also in frequent use for the purpose of remittance from one part of the United Kingdom to another. Thus the trader in Manchester, Leeds, or Birmingham, who has a payment to make in London, remits bills of his customers in the country. These are discounted by the moneyed capitalists through the intervention of bill-brokers. A few of the London bankers also dis-

count for the accommodation of their customers, and the Bank of England deals extensively in that department. The bills so cashed are transmitted to the provincial banks to be presented at maturity for payment. Conversely, in the provincial towns the country bankers discount bills on London, and transmit them to their correspondents there for payment. The rate of discount varies according to the demand for money, and the character of the particular bills; but it is seldom, upon regular transactions, more than four, or less than two and a half per cent.

Bills of exchange are also much used as follows:—A tradesman may not be able to pay ready money, but he can give the seller an order for payment on some other person, receiving or paying the difference, as the case may be, and making an allowance by way of interest, or, which is the same thing in other words, paying an extra price, in proportion to the time of the bill's currency. To the seller this mode of dealing is better than the giving of a naked credit, as he gets an additional chance of payment, and a written acknowledgment of his debt. When the negotiability of inland bills was admitted, they served all the purposes of actual money, because in the same manner as the original seller had taken the order in payment, another would receive it from him in the purchase of other commodities; or it might be at once discounted or converted into cash by application to a money-dealer.

The drawing of a bill supposes that the drawee either has in his possession funds of the drawer, or is his debtor to the amount specified in the order: it was therefore an easy step in the transactions of wholesale dealing for the seller to draw upon the buyer, for the price of the goods, a bill payable to his (the seller's) own order at some future day. This bill the buyer immediately accepted, and thus in effect acknowledged himself to be the debtor of the drawer to the amount specified, and engaged to pay the holder at maturity. By this arrangement, now very general, the buyer obtains credit for the term at the expiration of which the bill is made payable, and the seller has the advantage of a fixed day for payment being named in the bill, and a means of procuring cash if he chooses to negotiate the bill.

Bills of Exchange are also frequently drawn and accepted under such circumstances as follow:—There are in most of the principal trading ports of the world, merchants who carry on the business of general factors or agents for sale, and whose establishments are known among mercantile men under the name of commission-houses. The course of dealing with such houses is, for the most part, this:—A., a manufacturer at Manchester, consigns a cargo of cotton pieces to B. and Co., a commission-house at Mexico, for sale on his account. The English correspondents of B. and Co. are Messrs. C. and Co. of London. By an arrangement among these several parties A. draws on C. and Co. for half or two-thirds, as may be agreed, of the invoice price of the goods consigned, and by discounting the bill with his banker obtains at once an instalment in money, which immediately returns into his capital, and becomes useful in producing more goods. Ultimately, account sales are furnished by the Mexican house, and A. again draws on C. and Co. for the balance in his favour. Annual balances are struck between B. and Co. and C. and Co., and remittances by bills for the adjustment of the account complete the transaction. Now the advantages of this anticipatory part-payment are obvious, more especially in the trade with distant countries, as South America or the East Indies. But the practice has degenerated into something of an abuse; for it has of late been frequent with the consigners of goods to make out invoices with prices artificially high, and so to procure a remunerating return even from the proportion for which they are authorized to draw in advance. The effect is to throw upon the consignees the whole risk, which was formerly shared between the two, and proportionately to impair the steadiness and security of commerce.

Good bills, as already observed, may be always discounted. Accordingly, any man whose credit is good may at any time raise money upon a bill drawn, accepted, or indorsed by himself. If his

credit be doubtful he may still procure cash by the same expedient, but he will have to pay a premium or rate of discount proportioned to the increased risk. Among needy men instances are not unfrequent of discounts procured by these means at the exorbitant rate of 20 or 30 per cent. But a still more common practice is the negotiation of what are called by the significant name of *accommodation* bills. A trader unable to meet his liabilities applies to a friend whose credit is better than his own, to accept, or in some other way to become a party to, a bill drawn for the purpose: the trader undertakes to provide the funds necessary for paying it when due, and generally gives in return his own acceptance of another like bill, known in the mercantile world as a cross acceptance. When one or more names have thus been obtained sufficient to give currency to the bill, it is discounted, and the money applied to the necessities of the trader. As this bill falls due, the same operation is repeated in order to raise money, until the system of expedients failing at last, as sooner or later it inevitably must, the ruin of the insolvent trader himself is accomplished, and not unfrequently draws along with it others who, unfortunately or imprudently, may have become parties to these unsubstantial representatives of value. Of the more serious mischiefs of this dangerous practice, such as the temptation to forgery by the use of fictitious names as drawers or payees, it is perhaps useless to speak, because few men at first seriously contemplate the commission of a crime, but are rather drawn into it by circumstances not foreseen or not appreciated; but the reflection that it is a foolish and improvident practice—that, in addition to the loss of credit, which, once perceived (and how can it fail to be perceived?), it is sure to occasion, there is the certain expense of stamps and higher rates of discount, and moreover a *double liability* in respect of every shilling for which cross acceptances are given—may perhaps have some effect in deterring honest men, however necessitous, from having recourse to this fatal expedient.

Viewed as a legal instrument, a bill of exchange, as well in its original formation as in its successive transfers, is an assignment of a debt, by which the right of the original creditor to sue for and obtain payment is transferred to the holder for the time being. The Roman law presented no obstacles to such a substitution; and in those countries therefore which had adopted the civil law, the negotiation of bills found no impediment. But it was a principle of the common law of England, that the assignment of things not in possession, such as a debt of right, being in truth the assignment of suits at law, might be converted into a means of oppression, and the validity of such transfers was not recognised by it. But in the case of bills of exchange the principle of law yielded to general convenience; and the negotiability of foreign bills was recognised by the English law. It was not, however, until three centuries later, that the negotiability of inland bills was recognised by the courts, unless on proof of some special custom of trade; but expediency finally prevailed, and at the present day, as well by the common law as by the statutes of 9 & 10 Wm. III. c. 17, and 3 & 4 Anne, c. 9, they stand on the same general footing as foreign bills.

It is this assignability, vesting in the holder a right of action against the original parties, which chiefly distinguishes a bill of exchange from every other form of legal contract. Another and scarcely less important privilege is, that though a simple contract debt, and as such requiring a *consideration* to give it legal efficacy, the consideration is presumed until the want of it be shown. It is available therefore in the hands of a *bonâ fide* holder, upon merely formal proof of title by the signature of the party to be charged: that is to say, it is unnecessary to prove value given, unless it be first shown on the other side that the bill is in some stage or other tainted with an illegality, and the *bonâ fides* is assumed until it shall be made to appear that the holder was, at the time of taking it, privy to that illegality. From this rule an exception is made as to bills given for a gambling debt, which by statute are void even in the hands of an innocent holder. The rules of law applicable to bills of

exchange have been settled by numerous decisions, and it is of great importance to mercantile men to be acquainted with them; but the consideration of them properly belongs to a legal treatise.

EXCHANGE BROKER. [BROKER.]

EXCHEQUER BILLS. [NATIONAL DEBT.]

EXCHEQUER CHAMBER. [EXCHEQUER, COURT OF; COURTS.]

EXCHEQUER COURT is a superior court of record established by William the Conqueror as part of the Aula Regis, and reduced to its present order by Edward I.

It is the lowest in rank of the four great courts of law which sit at Westminster Hall, although in ancient times one of the first in importance, as all causes relating to the rights of the crown were there heard and determined, and the revenues of the crown were supposed to be received there.

The Latinized form of the word Exchequer is *Scaccarium*. Camden says it was so called from the covering of the table at which the barons sat being party-coloured or *chequered*, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters.

The judges of the court of exchequer are the chancellor of the exchequer for the time being [CHANCELLOR, p. 482], the chief baron, and four other barons, who are created by letters patent, and are so called from their having been formerly chosen from such as were barons of the kingdom, or parliamentary barons (Selden's *Titles of Honour*).

The Court of Exchequer was formerly held in the king's palace. Its treasury was the great deposit of records from the other courts; writs of summons to assemble the parliaments were issued by its officers; and its acts and decrees, as they related almost entirely to matters connected with the king's revenue, were not controlled by any other of the king's ordinary courts of justice.

It now consists of two divisions, one of which exercises jurisdiction in all cases relating to the customs and excise, and over revenue matters generally. The other division is a court of common law, in which all personal actions may be brought: the exchequer court of equity was abolished by 5 Vict. c. 5.

A plaintiff, when bringing an action in this court, previously to the Act for Uniformity of Process in personal actions (2 Wm. IV. c. 39), fictitiously alleged himself to be the king's debtor, in order to give the court jurisdiction in the cause; but since the passing of that act it is no longer necessary to resort to this fiction in order to bring an action in the Court of Exchequer, as that statute assimilates the practice of all the common law courts, and the operation as well as the name of the processes issued from them are the same.

The number of officers on the plea side of the Court of Exchequer, and their several duties were regulated by 2 & 3 Wm. IV. c. 110. By 3 & 4 Wm. IV. c. 99, the following officers in the Court of Exchequer were abolished:—the lord treasurer's remembrancer, the filacer, secondaries, deputy remembrancer, and sworn and other clerks and bag-bearer belonging thereto; clerk of the pipe, deputy-clerk of the pipe, controller and deputy-controller of the pipe, secondaries, attornies, or sworn and other clerks and bag-bearer in the said office of the pipe; clerk of the estreats; surveyor of the green wax; the foreign apposer, and deputy foreign apposer, and clerk of the nichills. By 5 & 6 Vict. c. 86, certain officers on the revenue side of the court were abolished, and the office of remembrancer of the court was regulated.

An appeal lies from this court by writ of error to the justices of the courts of king's bench and common pleas sitting in the exchequer chamber, who alone have power to review the judgments of the barons: and from their decision a further appeal may be brought before the House of Lords.

The Court of Exchequer chamber was first erected in England by stat. 31 Edward III., to determine causes upon writs of error from the common law side of the Court of Exchequer. The judges of the three superior courts occasionally sit here to hear arguments in important criminal cases, and upon causes of great weight and difficulty, in which the judges of the

courts below have not given their judgment.

As a court of error, the Court of Exchequer chamber underwent considerable alterations by the passing of the 11th Geo. IV. and 1st. Wm. IV. c. 70, and its constitution is now regulated by that statute. [COURTS.]

The Court of Exchequer in Scotland was established by the 6th Anne, c. 26. This court was abolished in 1832 by 2 & 3 Wm. IV. c. 54. The judges were the high treasurer of Great Britain, with a chief baron, and four other barons.

The Court of Exchequer in Ireland was established by the 40th Geo. III. c. 39, and consists of the chief justices, chief baron, and the rest of the justices and barons, or any nine of them.

EXCISE DUTIES, the name given to taxes or duties levied upon articles of consumption which are produced within the kingdom. This description, which has usually been given of excise duties, is more strictly applicable now than it was formerly, when the commissioners of excise revenue were also charged with the collection of duties upon various articles imported from foreign countries. Among these foreign articles were wine, spirits, tobacco, glass, and tea. The last named of these was the last that was withdrawn from the management of the Excise and transferred to the Board of Customs. There are still, it is true, certain duties to which the name of excise is applied which can hardly be called duties upon consumption, such as the sums charged for licenses to permit persons to carry on certain trades, the post-horse duties, and the duty on sales by auction abolished in 1845.

Excise duties are said to have had their origin in this country in the reign of Charles I., when a tax was laid upon beer, cider, and perry, of home production. The act by which these duties were authorised was passed by the long parliament in 1643. This act contains also a list of foreign articles, and among others tobacco, wine, raisins, currants and loaf sugar, upon which excise duties were imposed in addition to duties of customs already chargeable. This act was adopted and enforced under the protectorate of Oliver Cromwell; and by the statute 12 Charles II. c. 24, the duties of excise were granted to the crown as part of its revenue.

For a long time this class of duties was viewed with particular dislike by the people, on account of its inquisitorial interference with various industrial pursuits; and it certainly forms a very strong ground of objection against excise duties, that the security of the revenue is held to be incompatible with the perfect freedom of the manufacturer as to the processes which he may apply in his works. In every highly-taxed country where consumption duties form part of the public revenue, it would seem however to be hardly possible to avoid the adoption of this class of duties. In France there is, for example, a customs duty upon foreign-made sugar; and it is clearly necessary for the protection of the revenue that an excise duty should be imposed upon sugar produced at home from beet-root, otherwise the producer of indigenous sugar would charge the consumer nearly as much as he would pay to the importer of foreign sugar, and would for a time pocket the amount of the duty. By such means a branch of industry would be fostered, unprofitable to the country at large, and profitable only to the few persons by whom the indigenous sugar is produced, but whose profits would not long continue greater than the usual profits upon the employment of stock obtainable in the same country from other branches of industry. In this country sugar manufactured from beet-root or potatoes is subjected to an excise duty. For the same reason it would be unfair to permit malt to be imported without imposing on it a duty corresponding in amount to the excise duty. There are consequently "countervailing duties" on the importation of articles subject to excise duty; and a drawback is allowed on the exportation of domestic articles which are subject to excise duty.

Excise duties are liable to this among other very serious objections, that the regulations under which they are collected interfere with processes of manufacture, so as to prevent the adoption of improvements. Upon the same premises, with the same capital, and the

same amount of labour, double the quantity of cloths has been printed which could have been printed previous to the repeal of the duty and the consequent abolition of the excise regulations. The abolition of the excise duty on glass was avowedly made with the object of facilitating improvements in the manufacture. The excise regulations respecting the manufacture of soap have prevented our soap manufacturers from entering into competition with the manufacturers of other countries.

Another great objection that may be urged against excise duties is, the facilities which they offer for the commission of frauds against the revenue. In the Seventeenth Report of the Commissioners appointed to inquire into the management and collection of the excise revenue, it is stated as a striking proof of the extent to which frauds are committed by manufacturers of soap, that "there are in England fifty that take out licenses, for which they pay 4*l.* per annum, each of which makes, or rather brings to charge, less than one ton of soap per annum, from which it is obvious that as the profits of such a sale would not pay for the licence, the entry is made in order to cover smuggling." With regard to malt, another article of great consumption which is subject to excise duties, the commissioners state it to be their opinion, founded upon the evidence given by several respectable maltsters, "that malt is sold throughout the season, and in large quantities, for a price that is insufficient to pay the expense of making it and duty; and that the duty is evaded to a great amount."

In 1797 the number of articles subject to excise duties was 28; 15 in 1833; 10 in 1835; and now, June, 1845, there are only 9, including sugar. The Post-horse duty is under the management of the Board of Excise, and in Ireland the duty on game certificates. In the following list of the articles which paid Excise duties in 1797, the first eight are still subject to these duties, and with sugar made here constitute all the articles on which the Excise duty is now collected:

Bricks.
Hops.
Licences.
Malt.
Paper.
Soap.
Spirits, British.
Vinegar.

Salt,	repealed	1825.
Wire,	do.	1826.
Beer,	do.	1830.
Cyder and Perry,	do.	1830.
Hides and Skins,	do.	1830.
Printed Goods,	do.	1831.
Candles,	do.	1832.
Tiles,	do.	1833.
Starch,	do.	1834.
Stone Bottles,	do.	1834.
Sweets and Mead,	do.	1834.
Auctions,	do.	1845.
Glass,	do.	1845.
Tea,	transferred to Customs.	
Coaches,	transferred to Stamps.	
Cocoa and Coffee,	transferred to Customs.	
Pepper,	do.	
Spirits, Foreign,	do.	
Tobacco and Snuff,	do.	
Wine,	do.	

In 1822 the Excise duties yielded for the United Kingdom twice as much as the Customs duties. The receipts from Customs were 14,384,710*l.* and from the Excise 31,190,948*l.* In 1797 the Excise duties collected in England amounted to 11,069,668*l.*, and in 1821 they reached to 27,400,300*l.*, which is the highest sum they ever attained. In 1845 they are again reduced to the amount at which they stood in 1797. In 1829 the large sum of 6,013,159*l.* was paid at the chief office for the London "collection," and in 1835, only 1,462,919*l.*: the boundary of the "collection," it may be as well to state, does not comprise the whole of the metropolis. In 1825 several articles were transferred to the Customs, and in the same year the salt duty was repealed. This example was followed in the case of many other articles, so that between 1825 and 1834 the duties transferred to the Customs amounted to 11,238,300*l.* and the duties altogether repealed to 6,782,000*l.*, making a total of 18,020,300*l.*, Two articles alone on which the duty was taken off produced upwards of 5,000,000*l.* annually, namely, beer 3,100,000*l.* and printed cottons 2,104,000*l.*

In 1835 the number of traders in the

United Kingdom who were surveyed periodically by Excise officers was 588,000. They were divided into five classes: 1. Persons visited for the purpose of charging the "growing" duties, as maltsters, soap-makers, &c. 2. Persons who paid a licence according to the extent of their business, as brewers and some others. 3. Innkeepers and retailers of beer and others, who dealt in articles upon which an Excise duty was levied. 4. Persons who were dealers in articles upon which Customs duties had been paid. 5. Persons who did not pay duties, but were subject to cautionary surveys; tallow-melters, for example, as a check upon soap-makers. The cost of these surveys in England only amounted to 533,902*l.* In a single year the number of surveys of dealers in tea, wine, and tobacco has been about fifteen millions; 1,657,957 permits were required before goods in certain quantities could leave their premises; and 778,988 books were supplied to these dealers in which to keep an account of their stock and sales. Since 1835 several of the surveys have been abolished, and it has generally been found that they were of little or no value so far as the revenue was concerned, while they were a vexatious hinderance to business. These and some other improvements in the Excise department are in a great measure the result of the Seventeen sound, able, and elaborate Reports of the Commissioners of Excise Inquiry, appointed 27th of March, 1833, and which embraced each of the articles subject to Excise duties.

The gross receipt collected by the Excise on each article of duty in 1844 was as follows:—

	England.	Scotland.	Ireland.
Auctions ...	£275,177	£20,025	£13,427
Bricks	435,336	11,379	
Glass	785,869	54,714	6,575
Hops	245,668		
Licences....	835,430	105,460	95,504
Malt.....	4,285,887	546,345	161,003
Paper.....	542,907	135,649	30,762
Post-Horse Duty.....	146,195	16,966	
Post-Horse Licences..	4,166	357	55
Soap.....	1,092,690	97,962	
Spirits.....	2,694,049	1,533,028	1,014,505
Sugar	6,867		93
Vinegar	17,805	127	269
	11,368,054	2,522,017	1,133,773*

The gross receipt, charges of management, and the rate per cent. for which the gross revenue of Excise was collected in 1844 were as follows:—

	Great Britain.			Ireland.		
	£	s.	d.	£	s.	d.
Gross Receipt	13,905,022	0	0	1,339,394	0	0
Repayments, Allowances, Drawbacks, &c.	773,468	0	0	1,612	0	0
Charges of Collection	809,038	0	0	166,671	0	0
Rate per cent. of Charges of Collection .	5	16	4¼	12	8	10½
Paid into the Exchequer	12,160,111	0	0	1,402,986	0	0

Prior to 1823 there were separate and independent Boards of Excise for England, Scotland, and Ireland, and the total number of Excise commissioners was twenty-one. The business is now better conducted by seven commissioners and by one board in London. The chairman has a salary of 2000*l.*, the deputy-chairman 1500*l.*, and each of the other commissioners 1500*l.* a year. The commissioners hold courts and decide summarily in case of the infraction of the Excise laws. The number of persons employed at the chief Excise-office in London is about five hundred. In 1797 Mr. Pitt pointed at the Excise establishment as a model for other public departments on account of its efficiency and good management. In 1797 the number of officers belonging to the department in England was 4777, and their salaries amounted to 323,671*l.*; in 1815 the number of officers was 7986, and their salaries 904,922*l.*; and in 1835 there were 4190 officers, and their salaries amounted to 518,620*l.*

For the management of the business of the Excise department the whole of the United Kingdom is divided into Collections, and these are subdivided into Districts, Rides, and Divisions. There are fifty-five collections in England and

* This sum includes 11,575*l.* on account of game certificates.

Wales, exclusive of the London collection, and at the head of each is a collector, who visits the principal towns in his circuit eight times a year to receive the duties and transact other business connected with the department; besides which he is required to have an eye generally upon the discipline and efficiency of the service. The number of officers in a collection varies from forty to ninety. The next subdivision of a collection is the district, at the head of which is a supervisor. Next come the subdivisions of the districts into rides and divisions, or foot-walks. Where the traders are scattered, the officer is obliged to keep a horse, and his circuit is called a ride; but if a larger number of traders reside in a smaller circuit, they are visited by the officer on foot, and then the subdivision is termed a division or foot-walk. Before going out each day, the officer leaves a memorandum at his home which states the places he intends to survey, and the order in which he will visit them; and the exact time at which he commences each must be entered in his journal. The supervisor re-surveys some of the officer's surveys, but which they will be the officer is of course ignorant; and if errors are discovered, they must be entered in the supervisor's diary. These diaries are transmitted to the chief office every two months, and no officer is promoted unless the diaries show him to be efficient. The periodical removal of officers from one part of the country to another was Mr. Pitt's suggestion, and is still acted upon: about 1100 officers change their residence yearly. The Commissioners of Excise Inquiry doubt the advantage of this system to the public service; and it is injurious to the officers by interfering with the comfort of their families and interrupting the education of their children. At the chief office in London there is a department of Surveying-General Examiners, who are despatched to any district without previous intimation, as a check upon the accuracy and integrity of the supervisors. Promotions take place in the Excise department after a certain fixed period in each grade, and only then when the officer petitions for advancement. This involves a rigid examination into his qualifications, which is termed "taking out a character." To take the case of a supervisor, for example, who petitions for promotion: the whole of his books for one year and the books of the officers under him for a quarter of a year, are examined in the office of the country examiners; all the accounts are re-cast, and errors in the books of the subordinate officers are reckoned to the supervisor's disadvantage. When this has been done, a surveying-general examiner carries the investigation further, and ascertains whether the supervisor has discharged his duties judiciously or not; amongst other things, whether he has been longer employed on a duty than he ought to have been if fully competent for his office. The whole examination occupies about two months; and when the final report is laid before the commissioners the name of the officer is not given.

EXCOMMUNICATION is the highest ecclesiastical censure which can be pronounced by a spiritual judge. The person against whom it is pronounced is for the time excluded from the communion of the church. This punishment, according to some opinions, had its origin in the advice given by St. Paul when reproving the early Christians for scandalizing their profession by prosecuting law-suits against each other before heathen judges; and the apostle accordingly recommended them to leave all matters in dispute between them to the decision of the Ecclesia, or the congregation of the faithful.

The bishop and his clergy, and afterwards the bishop alone, became sole judge in these disputes; but possessing no coercive powers to enforce their decrees, they were obliged to adopt the only means of which they could avail themselves, to bring the refractory to submission, namely, by excluding them from the rites of the Church, and warning other Christians from their company and presence. A Christian thus shut out from the fellowship of his own brethren could not do otherwise than submit.

This censure, although instituted by the primitive church as the means of preserving its purity, and of enforcing obe-

dience to its laws, was afterwards used for the extensive promotion of ecclesiastical power, and was converted into a means of oppression in those countries which were most subject to ecclesiastical power. (Robertson's *History of Charles V.*, vol. ii. p. 109.)

In England excommunication became at an early period the means of punishment under the authority of the bishops, and others who had ecclesiastical jurisdiction. It was divided into the greater and the less excommunication. The latter only removed the person from a participation in the sacraments, and is what was most commonly meant by the term excommunication; the other was called anathema, and not only removed the party from the sacraments, but from the Church and all communication with the faithful, and even deprived him of Christian burial. Subjects were absolved from their allegiance to an excommunicated prince. Gregory V. was the first prelate who ventured to excommunicate a reigning prince in the case of Robert, King of France, in 998. John and Henry VIII. are well-known instances in English history.

The following offenders were punished with the greater excommunication: diviners, heretics, their receivers and comforters; simoniacs; violators and plunderers of churches; those who spoiled clerks going to Rome; the plunderers of the property of a bishop which ought to go to his successor; those who gave aid, favour, or counsel to excommunicated persons; those who laid violent hands on clerks or religious persons, or commanded others to do so.

Those punished with the less excommunication were persons committing any mortal sin, as sacrilegious persons; those who received a church from lay hands; notorious offenders; those who talked with, saluted, or sat at the same table with, or gave anything in charity to persons excommunicated by the greater excommunication, unless they were familiars or domestics.

Excommunication was also pronounced for other matters which belong to ecclesiastical jurisdiction, such as adultery and fornication, or for contempt of any ecclesiastical order or sentence. A sentence of excommunication was preceded by three monitions at due intervals, or one peremptory, containing the legal space of time, with a proper regard to the quality of the person and the nature of the offence. But, as Blackstone in his usual manner remarks, "heavy as the penalty of excommunication is, considered in a serious light, there are, notwithstanding, many obstinate or profligate men, who would despise the *brutum fulmen* of mere ecclesiastical censures, especially when pronounced by a petty surrogate in the country, for railing or contumelious words, for non-payment of fees or costs, or other trivial causes. The common law therefore compassionately steps in to the aid of the ecclesiastical jurisdiction, and kindly lends a supporting hand to an otherwise tottering authority." This was effected by the writ "de excommunicato capiendo," or for seizing the excommunicate. But before the writ for taking the excommunicated person could be granted, the contumacy and contempt of the party were to be certified by the bishop to the court of Chancery by letters under his seal; and by 5 Eliz. c. 23, the writ was made returnable into the King's Bench. By the statute just cited the cause of excommunication was to be stated in the writ, in order that the court might judge as to the justice of the case. The sentence of excommunication might be revoked by the judge who passed the sentence, or upon appeal the party might be absolved. Absolution generally belonged to the same person who passed the sentence, unless in some particular cases, which were referred to the pope or a bishop. (Reeves's *Hist. of English Law*; Sullivan's *Lectures*.)

By a sentence of excommunication, both greater and less, the excommunicated were excluded from the right of Christian burial, from bringing or maintaining actions, from becoming attorneys or jurymen, and were rendered incapable of becoming witnesses in any cause. But since the 53 Geo. III. c. 127 (54 Geo. III. c. 68, for Ireland), excommunication cannot now be pronounced in England or Ireland, except in certain cases (as spiritual censures for offences of ecclesias-

tical cognizance); and by the 3rd section of that statute "no person who shall be pronounced or declared excommunicate (pursuant to the second clause of this statute) shall incur any civil penalty or incapacity, in consequence of such excommunication, save such imprisonment, not exceeding six months, as the court pronouncing or declaring such person excommunicate shall direct." The proceedings in those cases, in which excommunication may still be pronounced, are the same, as to the issuing and return of the writ, as they were before the act of 53 George III. By the same act (53 George III. c. 127), in all cases cognizable by the laws of England in ecclesiastical courts, when any person shall refuse to appear when cited by such court, or shall refuse to obey the lawful order or decree of such court, no sentence of excommunication, except in the cases above alluded to, shall be pronounced; but a writ "de contumace capiendo" shall issue, which in effect is the same as the old writ "de excommunicato capiendo" was.

EXECUTION is the effect given to the judgments and other proceedings analogous to judgments of courts of law in civil suits. This term denotes the process by which a party is put into the possession of that to which the judgment of a competent court declares him to be entitled.

As a judgment of a court of common law ascertains that the party is entitled to the possession of some object of a real or personal nature; or to recover damages in respect of property withheld or injuries done, so the execution founded upon such judgment will be framed with a view to putting the party in whose favour the judgment is given either in the possession of the thing in dispute, or to enable him to obtain pecuniary compensation.

For this purpose a written command issues in the name of the king or other lord of the court, to an officer of the court. When the judgment is in one of the king's superior courts at Westminster, the officer of the court for this purpose is the sheriff of the county in which the property is situated, or, in the case of pecuniary compensation, the sheriff of the county in which the party from whom such compensation is due is supposed to reside; which, until the contrary is shown, is taken to be the county in which the litigation was carried on.

When lands or other corporeal hereditaments are recovered, the process of execution varies according to the nature of the interest recovered. If a right to a freehold interest has been established, the writ commands the sheriff to give the recoverer seisin of the lands, &c., and is called Habere facias seisinam. If a chattel interest in land is recovered, the writ does not affect to authorize the sheriff to intermeddle with the freehold, and directs that officer merely to give possession of the land, &c. This is called Habere facias possessionem.

A judgment in the action of Detinue establishes the right of the recoverer to the possession of a specific personal chattel, and the writ of execution called a Distringas ad deliberandum issues, which requires the sheriff to coerce the defendant by his distringas (distress) to restore the specific chattel or its value.

A judgment for the defendant in Replevin establishes his right to the possession of the personal chattel which formed the subject of the litigation. In the ordinary case of an action of replevin after a distress, the right of the defendant in respect of the chattel distrained is merely to hold it as a security for the payment of the debt or duty, the payment or performance of which is sought to be enforced by the coercion of a distress. The writ of execution requires the sheriff to cause the chattel to be restored to the possession of the defendant. This is called a writ De retorno habendo, and in case the sheriff is unable to find the chattel, further process issues commanding him to take other chattels of the plaintiff as a substitute for that which is withheld, by a writ called a Capias in withernam.

The most ordinary cases of execution are those in which pecuniary compensation is to be obtained, but in these cases the sheriff is not authorized directly to take money from the party by whom it is to be paid. Formerly the only mode of

obtaining this compensation was by process of distringas or distress. And this is still the case in inferior courts; but in the superior courts execution of judgments or other records which establish pecuniary claims, may be had by a writ of Fieri facias, which affects the personal property; by writ of Elegit, which affects both real and personal property; and by Capias ad satisfaciendum, by which compliance with the pecuniary demand is enforced by detention of the person of the defaulter in prison until the claim be satisfied, or the adverse party consents to his discharge.

A subject is not entitled to pursue all these remedies at once; but in the case of the crown, the right to obtain satisfaction from the goods, lands, and person of its debtor may be enforced simultaneously, by writ of Capias, and Extendi facias, or Extent.

Execution is also the term applied to denote the giving effect to the sentence of a court of criminal jurisdiction. In this sense it is most commonly used with reference to the execution of sentence of death. [SHERIFF.]

EXECUTOR. An executor is he to whom another man commits by will the execution of his last will and testament. The origin of executors seems to be traceable to a constitution of Manuel Comnenus (περὶ διοικητῶν τῶν διαθηκῶν). All persons who are capable of making a will, and some others besides, as married women and infants, are capable of being made executors; but infants are by statute rendered incapable of acting in the execution of the will until they attain the age of twenty-one.

An executor can derive his office from a testament alone, though it is not necessary that he should be appointed by any particular words. If no executor is appointed by the will, administration is granted by the ordinary, with the will annexed, in which case the administrator is bound to obey the directions of the will. An executor may decline to act; but having once acted, he cannot divest himself of the office or its liabilities; nor can an administrator who has accepted the office get rid of his responsibility.

The first business of an executor is to prove the will, as it is termed, which is done before the proper ecclesiastical court, which furnishes him with a Probate, or approved copy of the will, which is his authority for acting. The original will is deposited in the registry of the court. An executor may do many acts in execution of the will before probate, as paying and receiving debts, &c., but he cannot, before probate, sustain actions or suits. An administrator can do nothing till the letters of administration are issued; for he owes his appointment to the ordinary. If an executor die before probate, administration must be taken out to his testator, with the will annexed; but if an executor, having proved the will, die, his executor will be the executor and representative of the first testator, unless, before proving the will of the second testator, he expressly renounces the execution of the will of the first. If the executor dies intestate, his administrator is not the representative of the testator, but an administrator *de bonis non*, as it is termed, of the testator must be appointed by the ordinary. If there are several executors, the office survives, and is transmitted ultimately to the executor of the surviving executor, unless he dies intestate. Executors have a joint and entire interest in the effects of their testator; any one of them is capable of acting by himself; and the receipt of a debt, or the transfer of property by one, is as valid as if it had been done by all.

If a stranger takes upon himself to act as executor without any authority, he is called an executor *de son tort* (of his own wrong), and is liable to all the trouble of an executor without any of the advantages attached to the office. He is chargeable with the debts of the deceased, so far as assets come to his hands; and is liable not only to an action by the rightful executor or administrator, but also to be sued as executor of the deceased by the creditors and legatees. The only advantage which an executor derives from his office is the right to retain any debt due to him from the testator, as against creditors of equal degree, and this privilege is allowed him, because he cannot take any legal steps to recover payment.

The duties of executors and adminis-

trators are in general the same. Their duties are to bury the deceased, to prove his will (which of course only an executor has to do), to get in his goods and chattels, to pay his debts in the order appointed by law, and also his legacies, if he has bequeathed any, and to dispose of the residue of his goods and chattels in the manner by the will directed, or according to the statutes for the distribution of the effects of intestates, if there should be a total or partial intestacy. Executors and administrators are liable to an action at law, and also to a suit in equity, for the payment of the debts and liabilities of their testator or intestate; and to a suit in equity and the Ecclesiastical Court for the legacies bequeathed by him, and the due administration of his estate: but no action at law lies for a legacy, at least not until after the executor has assented to it, as it is called, that is, has acknowledged the sufficiency of the assets after providing for the payment of the debts.

The Ecclesiastical Courts are the only courts in which, except by special prescription, the validity of wills of personalty can be established or disputed. If all the goods of the deceased lie in the diocese or jurisdiction within which he died, the will is proved before the bishop or ordinary of that diocese or jurisdiction; but if he had *bona notabilia* (that is, goods and chattels to the amount of 5*l.*) within some other diocese or jurisdiction than that in which he died, then the will must be proved before the archbishop or metropolitan of the province by special prerogative; and if there be *bona notabilia* in different provinces, there must be two prerogative probates. A will should be proved within six months after the death of the testator, or within two months after the termination of any dispute respecting the probate. (55 Geo. III. c. 184, § 57.)

Executors and administrators are treated by the courts of equity as trustees for the creditors, legatees, and next of kin of their testators or intestates. They are bound to administer the assets according to their due order of priority, and to pay the debts of the deceased in like manner; and though the ecclesiastical courts will entertain suits for the payment of debts or legacies and the due administration of the assets, yet, where there is any trust to be executed, or any charge on the real estate to be established, a court of equity will interfere by injunction or prohibition; for the constitution of the ecclesiastical courts is not adapted to the administration of trusts, and over real estate they have no jurisdiction. The probate is exclusive evidence of a will of personalty; but courts of equity assume the jurisdiction of construing the will in order to enforce the performance of the trusts by the executor: hence they are sometimes styled courts of construction, in contradistinction to the ecclesiastical courts, which, although they also are courts of construction, are the only courts of probate. Formerly, the personal estates only of persons deceased were liable for the payment of their simple contract debts; but now, since the statute 3 & 4 Wm. IV. c. 104, real estates are liable for the payment of debts of that nature; and it may be broadly stated that all the real and personal estates of the deceased are assets for the payment of his debts. The personal estate is liable in the first instance, unless the testator direct otherwise. Estates descended are applied before estates devised; and in other respects the estates of the deceased are administered in the order laid down by the courts.

The debts are payable in a certain order, which is fixed by law, and the executor should observe it. If he finds any difficulty in this matter, he ought to take the best legal advice that he can get.

The next duty of an executor or administrator is to pay the legacies, and to distribute the personal estate of the deceased pursuant to his will; and if there is no will, to dispose of it pursuant to the Statute of Distributions. [ADMINISTRATION, p. 24.] In this part of his duty also, if he find difficulties, the safe and proper course is to take legal advice.

Full information upon these subjects will be found in the works of Williams and Toller 'On Executors,' and Wentworth 'On Administrators.'

EXEMPLIFICATION. [EVIDENCE.]

EXETER, or EXON DOMESDAY, the

name given to a record preserved among the muniments and charters belonging to the dean and chapter of Exeter cathedral, which contains a description of the western parts of the kingdom, comprising the counties of Wilts, Dorset, Somerset, Devon, and Cornwall. It is supposed, as far as it extends, to contain an exact transcript of the original rolls or returns made by the Conqueror's commissioners at the time of forming the General Survey, from which the great Domesday itself was compiled. It is written on vellum in the form of a book of the small folio size, containing 532 double pages. The skins or sheets of vellum of which it is composed vary in the number of leaves which they comprise from one to twenty; the lands of each of the more considerable tenants begin a new sheet, and those of almost every tenant a new page. The lands in the counties of Devon, Somerset, and Cornwall belonging to one tenant, are classed together, and the counties follow each other, though not always in the same order; and, in like manner, the summaries of property in Wilts and Dorset are classed together.

Upon collating the returns of lands which form the great body of the Exeter Survey with the Exchequer Domesday, they have been found, with a few trifling variations, to coincide; one entry of property alone is discoverable in the Exeter which is omitted in the Exchequer Domesday, relating to Sotrebroc in Devonshire. The Exeter manuscript, however, is not complete in its contents. There are considerable omissions of lands in Wiltshire, Dorsetshire, and Devonshire; but these have evidently been cut out and lost. In Cornwall every manor mentioned in the Exchequer occurs in the Exeter Domesday. One leaf of this record was accidentally discovered in private possession within these few years, and has been restored to the manuscript. In the writing of the names of places and persons there is a remarkable difference between the two records.

The most striking feature of the Exeter Domesday, in which it uniformly supplies us with additional knowledge to that in the Exchequer Survey, is the enumeration of live stock upon every estate; there is an account of the number of oxen, sheep, goats, horses, and pigs, exactly in the same manner as it is given in the second volume of the Great Domesday. The reason for omitting this enumeration in the breviated entries of the first volume of the Great Survey is self-evident. The live stock was altering every day and year; the enumeration of it therefore could be of no further use than for the exact time when the survey was made. A comparison of this part of the Exeter with the second volume of the Great Survey tends greatly to corroborate the notion that the returns of the counties of Essex, Norfolk, and Suffolk were transcribed in full from the original rotuli, in the same manner as the Exeter Domesday. The difference between the two surveys as to expression, when they agree in sense, is likewise remarkable; as for instance,

Exchequer Domesday.	Exeter Domesday.
Acra . . .	Agra
ad arsuram . .	ad combustionem
censores . .	gablatores
clerici . .	sacerdotes
geldabat . .	reddidit Gildum
leuca . . .	leuga
manerium . .	mansio
ad opus militum .	ad soldarios
molendinum .	molinus
nummi . .	denarii
in paragio . .	pariter
portarii . .	portatores
pastura . .	pascura
poterat ire quo volebat (tom. i. fol. 97 *b.*) . .	poterat sibi eligere dominum secundum voluntatem suam cum terra sua (fol. 383).
quarentena . .	quadragenaria
sylva . . .	nemusculum
T. R. E. (*tempore regis Edwardi*)	Die qua rex Edwardus fuit vivus et mortuus
tainus . .	tagnus
Terra est viii. car.	possunt arare viii. carr.
Terra Regis. .	Dominicatus Regis (and in one instance), dominicatus Regis ad regnum pertinens

Exchequer Domesday.	Exeter Domesday.
Totum valet xxi. lib.	Hæc mans. reddit ad opus abb. x. & viii. lib. et ad opus tagnorum iii. lib.

The utility of this record for the purpose of comparison with the Exchequer Domesday is obvious. The Exeter Domesday was published, with several other surveys nearly contemporary, by order of the Commissioners upon the Public Records, under the direction of Sir Henry Ellis, in a volume supplementary to the Great Domesday, folio, London, 1816. Our account of this record is chiefly derived from the Introduction to that volume.

EXHIBITION. [SCHOOL.]
EXILE. [BANISHMENT.]
EXPORTS. [BALANCE OF TRADE.]
EXTRA-PAROCHIAL. [PARISH.]
EYRE. [COURTS, p. 711.]

END OF VOLUME I.

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